BOGERT — DRAFT CONDITIONAL SALES ACT — 1916 - 1917-1918
1st - 2d - 3d.

# Tentative Draft

of

# Proposed Uniform Conditional Sales Act

## With Explanatory Notes

to be submitted to

The National Conference of Commissioners on Uniform State Laws

at

Chicago, Illinois, August 23, 1916

The following resolution was adopted by the Conference of Commissioners on Uniform State Laws at Salt Lake City, August 11, 1915:

"*Resolved,* That the subject of Conditional Sales Contracts be referred to the Committee on Commercial Law for consideration, with direction to draft a Uniform Act on that subject, if in its judgment it should seem wise, and to employ such expert assistance as it deems proper."

In accordance with this resolution, the committee retained the services of Professor George G. Bogert, of the Cornell University College of Law, who has prepared the tentative draft submitted herewith.

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# PROPOSED UNIFORM CONDITIONAL SALES ACT.

*To the Committee on Commercial Law of the National Conference of Commissioners on Uniform State Laws:*

GENTLEMEN: I submit herewith my draft of the proposed Uniform Conditional Sales Act with explanatory notes.

## INTRODUCTORY NOTES.

The following is a list of the statutes of the various jurisdictions which have legislated upon the subject of conditional sales. Specific references to these statutes are not given in the explanatory notes appended to each section. Should any commissioner desire to examine the statutory provision in any state upon any particular subject, he can readily do so by a reference to this table of statutes, since the number of sections in each state is small.

ALABAMA.—Code of 1907, Secs. 3394-3395; 3393 (railroad equipment); 7423 (criminal statute).

ALASKA.—Rev. Laws of 1913, Secs. 551-555.

ARIZONA.—Civil Code, Secs. 3278-3281.

ARKANSAS.—Kirby's Stats. (1904), Secs. 3661-3662 (fraudulent possession statute); 6678-6680 (railroad equipment); 2011 (criminal statute).

CALIFORNIA.—Henning's Gen. Laws (1914), Act 3834 (railroad equipment); Penal Code, Sec. 538 (criminal statute).

COLORADO.—Mill's Ann. Stats. (1912), Secs. 620-634; 6172-6176 (railroad equipment); 630-633 (criminal statute).

CONNECTICUT.—Gen. Stats. (1902), Secs. 834-835; 4864-4865; 4866-4867 (railroad equipment); 1253 (criminal statute); acts of 1909, p. 937.

DELAWARE.—Rev. Code of 1915, Secs. 2631-2632, 452 (railroad equipment).

DISTRICT OF COLUMBIA.—Code of 1910, Secs. 546-547; 833a (criminal statute).

FLORIDA.—Compiled Laws of 1914, Secs. 2516; 2845-2846 (railroad equipment); 3356-3357 (criminal statute).

GEORGIA.—Code of 1911, Secs. 2790-2792 (railroad equipment); 3318-3319, 3259; 722 (criminal statute).

HAWAII.—Rev. Laws of 1915, Sec. 3120.

IDAHO.—Rev. Code of 1908, Secs. 2827-2829 (railroad equipment); 7100 (criminal statute).

ILLINOIS.—Jones & Add. Stats. Ann. (1913), Secs. 8799-8800 (railroad equipment).

INDIANA.—Burns' Rev. Stats. of 1914, Secs. 5700-5702; 5526-5530 (railroad equipment).

IOWA.—Code of 1897, Secs. 2051-2053 (railroad equipment); 2905-2906.

KANSAS.—Gen. Stats. of 1909, Secs. 7144-7146 (railroad equipment); 3836 (fraudulent possession statute); 5237; 5239 (criminal statute).

KENTUCKY.—Statutes of 1915, Secs. 2496-2499 (railroad equipment); 1909 (fraudulent possession statute); 1358b (criminal statute).

LOUISIANA.—Marr's Ann. Rev. Stats., 1915, Secs. 6626-6629 (railroad equipment).

MAINE.—Rev. Stats. of 1903, Ch. 113, Sec. 5; Ch. 52, Secs. 95-98; Ch. 117, Sec. 17 (railroad equipment); Ch. 93, Secs. 3-6; Ch. 127, Sec. 1 (criminal statute).

MARYLAND.—Annotated Code, Art. 21, Sec. 91 (railroad equipment); Art. 27, Sec. 184 (criminal statute).

MASSACHUSETTS.—Rev. Laws of 1902, Ch. 198, Secs. 11-13; Acts of 1912, Ch. 271 (fixtures); Rev. Laws of 1902, Ch. 208, Sec. 73 (criminal statute); Supp. to Rev. Laws, 1902-1908, Chaps. 111-112, Secs. 59-60 (railroad equipment).

MICHIGAN.—Howell's Mich. Stats. (2d Ed.), Secs. 7037-7039 (railroad equipment); 14659 (criminal statute); Pub. Acts of 1915, p. 112, Sec. 1.

MINNESOTA.—Gen. Stats. of 1913, Secs. 6981-6993; 6225-6228 (railroad equipment).

MISSISSIPPI.—Code of 1906, Secs. 2785; 4103-4106 (railroad equipment).

MISSOURI.—Rev. Stats. of 1909, Secs. 2889; 2890; 2861; 3311-3313 (railway equipment); 4570 (criminal statute).

MONTANA.—Revised Codes of Mont., Secs. 5092-5094; 4301-4307 (railway equipment); 8689 (criminal statute).

NEBRASKA.—Rev. Stats. of 1913, Secs. 545-546; 2636-2637; 2638-2639 (railroad equipment); 534-535 (criminal statute).

NEW HAMPSHIRE.—Pub. Stats. of 1901, Ch. 140, Secs. 23-26; Pub. Stats. of 1901, Ch. 25, Secs. 1-3 (railroad equipment); Pub. Stats. Supp., 1901-1913, p. 328; Pub. Stats. of 1901, Ch. 140, Secs. 13-14, 16.

NEW JERSEY.—Comp. Stats. of 1911, Vol. II, p. 1561, Secs. 71-73; Vol. III, p. 4254, Sec. 80 (railway equipment); Comp. Stats. of 1911, p. 1805 (criminal statute).

NEW YORK.—Personal Prop. Law, Secs. 60-67; Penal Law, Sec. 940 (criminal statute).

NORTH CAROLINA.—Revisal of 1905, Secs. 982; 983, 984 (railway equipment); Pub. Laws, 1907, Ch. 150; Pub. Laws, 1913, Ch. 60; Rev. Laws of 1905, Sec. 3425 (criminal statute).

NORTH DAKOTA.—Comp. Laws of 1913; Secs. 6757-6758; 4625-4626 (railway equipment); Penal Code, Sec. 10248 (criminal statute).

OHIO.—Page & Adams Ann. Gen. Codes of 1912, Secs. 8568-8570; 12464; 12475 (criminal statute); 9060-9063 (railroad equipment).

OKLAHOMA.—Rev. Laws of 1910, Secs. 1391-1392 (railway equipment); 6745.

OREGON.—Lord's Oregon Laws, 1910, Secs. 6970-6971 (railroad equipment); 7414-7415 (fixtures); 1956 (criminal statute).

PENNSYLVANIA.—4 Purdon's Digest, 1910, p. 3917, Secs. 264-265 (railroad equipment); Acts of 1915, No. 386, p. 866 (fixtures).

RHODE ISLAND.—Gen. Laws of 1909, p. 738, Secs. 63-64 (railroad equipment).

SOUTH CAROLINA.—Code of 1912, Secs. 3740, 3542; 705-707 (railroad equipment).

SOUTH DAKOTA.—Comp. Laws of 1913, Secs. 1315; 490-491 (railroad equipment); 767 (criminal statute).

TENNESSEE.—Code of 1896, Secs. 3666-3670; 3587-3589 (railroad equipment); Acts of 1903, Ch. 199; Acts of 1911, Ch. 8; Code of 1896, Sec. 3152; Acts of 1899, Ch. 15; Acts of 1899, Ch. 12 (criminal statute).

TEXAS.—Vernon's Sayles' Civ. Stats. of 1914, Arts. 5654-5662; 6841.

UTAH.—Comp. Laws of 1907, Secs. 456x2-456x5 (railroad equipment).

VERMONT.—Pub. Stats. of 1906, Secs. 2663-2673; 5785 (criminal statute); 4389-4391 (railroad statute); 2669-2670 (criminal statute).

VIRGINIA.—Code of 1904, Secs. 2462-2462a; Acts of 1908, Ch. 253; Sec. 3719a (criminal statute).

WASHINGTON.—Rem. & Ball, Ann. Stats., Secs. 3670-3672; 2603 (criminal statute); 8741-8742 (railroad equipment); Laws of 1915, Ch. 95.

WEST VIRGINIA.—Code of 1906, Secs. 3101-3105; 3108.

WISCONSIN.—Stats. of 1913, Secs. 2317, 2317f, 2319b; 1839a (railroad equipment); Laws of 1915, Ch. 604.

WYOMING.—Comp. Stats. of 1910, Secs. 3745-3750; 5856 (criminal statute).

CANADIAN PROVINCES.

ALBERTA.—North-West Terr. Cons. Ordinances, 1905-1907, p. 450; as amended by Alberta Stats. of 1908, Ch. 20.

BRITISH COLUMBIA.—Rev. Stats. of 1911, Ch. 20; p. 2532.

MANITOBA.—Rev. Stats. of 1913, Ch. 17.

NEW BRUNSWICK.—Cons. Stats. of 1903, Ch. 143; Acts of 1909, Ch. 31; Acts of 1912, Ch. 30.

NOVA SCOTIA.—Rev. Stats. of 1900, Vol. 2, p. 413; Stats. of 1907, Ch. 42; Stats. of 1908, Ch. 24; Stats. of 1914, p. 59.

ONTARIO.—Rev. Stats. of 1914, Ch. 136.
PRINCE EDWARD ISLAND.—Stats. of 1896, Ch. 6.
SASKATCHEWAN.—Rev. Stats. of 1909, Ch. 145; Stats. of 1910-1911, Sec. 16; Laws of 1915, p. 728.

ENGLAND.—52 & 53 Vic., Ch. 45, Sec. 9 (1889).

SECTION 1. [Definitions.] The term "conditional sale," as used in this act, means (1) any contract for the sale of goods by which possession is to be delivered to the buyer on the making of the contract, and by which the property in the goods is to vest in the buyer at a subsequent time upon the payment of part or all of the price, or upon the performance of any other condition or the happening of any contingency; or (2) any contract for the bailment or leasing of goods by which the bailee or lessee contracts to pay as compensation a sum substantially equivalent to the value of the goods, and the bailor or lessor contracts that the bailee or lessee is to become, or is to have the option of becoming, or is obligated to become, the owner of such goods upon full compliance with the terms of the contract.

The term "seller," as used in this act, means the person who sells the goods covered by the conditional sale, or any legal successor in interest of such person.

The term "buyer," as used in this act, means the person who buys the goods covered by the conditional sale, or any legal successor in interest of such person.

The term "goods," as used in this act, means all chattels personal other than things in action and money, and includes emblements, industrial growing crops, and things attached to or forming a part of land which are agreed to be severed before sale or under the contract of sale.

NOTES TO SECTION 1.

It seems desirable to include sales where title is to pass on *part* payment, since the opportunity for deception of the public exists in such cases, though for a shorter period than when title is retained till full payment. The statutes of Montana, New Brunswick, and Ontario expressly include such contracts. Occasional cases of such reservation of title are to be found. Powell *vs.* Clawson, 38 Pa. Super. Ct. 245.

The statutes of Iowa, Nebraska, New Jersey, New York, Virginia, West Virginia, Wisconsin, and Wyoming define as conditional sales contracts which provide for the passing of the property to the buyer upon the performance of *any condition*, not merely upon the payment

of the price. In such cases possession and apparent ownership are rendered deceptive by a reservation of title, and the danger to the public is as great as if the condition had been payment of the price. Instances of reservations of this kind are not uncommon. Forbes *vs.* Taylor, 139 Ala. 286 (third party to pay the price); Van Allen *vs.* Francis, 123 Cal. 474 (execution of mortgage); Tarr *vs.* Stearman, 264 Ill. 110 (rendition of services); Bailey *vs.* Dennis, 135 Mo. App. 93 (execution of note); Clark *vs.* Clement, 75 Vt. 417 (doing of work).

It is well known that some sellers attempt to evade the conditional sale recording acts by calling the contract a "lease" or "hiring agreement" and providing for the payment of "rent." Wherever these "leases" are substantially equivalent to conditional sales, they should be subject to the same restrictions. This equivalency seems to exist when the buyer is bound to pay rent equal to the price or value of the goods and has the option of becoming or is to become the owner of the goods after all the rent is paid. In such a contract "rent" means the purchase price, and possession as "lessee" means the possession of a buyer under an executory contract of sale. That the buyer, in some cases, has the option of becoming the owner and thus a sale is not sure to take place, is of but small importance, for, as a practical matter, the buyer will always be willing to accept ownership when he has paid the price. The instances of a buyer declining to become the owner of goods where he has paid "rent" equivalent to the value of the goods, and electing to return the goods and allow his payments to be considered as actual rent, must be exceedingly infrequent.

The statutes of Alabama, Iowa, Maine, Missouri, Ohio, Washington, Wyoming, and Ontario class as conditional sales leases substantially like those described in section one. In many cases where the "lessee" has absolutely agreed to buy the goods at the rent named the contract has been held one of conditional sale. Warren *vs.* Liddell, 110 Ala. 232; Lundy Furniture Co. *vs.* White, 128 Cal. 170; Coors *vs.* Reagan, 96 Pac. (Colo.) 966; Hine *vs.* Roberts, 48 Conn. 267; Staunton *vs.* Smith, 65 Atl. (Del.) 593; Hays *vs.* Jordan, 85 Ga. 741; Lucas *vs.* Campbell, 88 Ill. 447; Singer Sewing Mach. Co. *vs.* Holcomb, 40 Iowa 33; Campbell *vs.* Atherton, 92 Me. 66; Smith *vs.* Aldrich, 180 Mass. 367; Wickes Bros. *vs.* Hill, 115 Mich. 333; Gerrish *vs.* Clark, 64 N. H. 492; Equitable Gen. Prov. Co. *vs.* Eisentrager, 34 Misc. (N. Y.) 179; Kelly Road Roller Co. *vs.* Spyker, 215 Pa. 332; Carpenter *vs.* Scott, 13 R. I. 477; Pringle *vs.* Canfield, 19 S. D. 506; Conan *vs.* Singer Mfg. Co., 92 Tenn. 376; Whitcomb *vs.* Woodworth, 54 Vt. 544; Kidder *vs.* Wittler-Corbin Mach. Co., 38 Wash. 179.

"Leases" have likewise been construed to be conditional sale contracts in numerous cases where the buyer had merely an option to become the owner in return for the rentals paid. Unmack *vs.* Douglass, 75 Conn. 633; Vette *vs.* J. S. Merrill Drug Co., 117 S. W. (Mo.) 666; Lanter *vs.* Isenrath, 72 Atl. (N. J.) 56; Central Union Gas Co. *vs.* Browning, 210 N. Y. 10; Weiss *vs.* Leichter, 113 N. Y. Supp. 999; Hamilton *vs.* Highlands, 144 N. C. 279; Sage *vs.* Sluetz, 23 Ohio Stats. 1; Herring-Hall-Marvin Co. *vs.* Smith, 43 Ore. 315; *In re* Morris, 156 Fed. 597; Singer Mfg. Co. *vs.* Nash, 70 Vt. 434.

SECTION 2. [Contract to be Filed.] No provision reserving property in the seller in a contract for the conditional sale of goods shall be valid against subsequent purchasers, mortgagees or

pledgees from the buyer, for value and without notice of the seller's title; or against any creditors of the buyer who levy upon or attach the goods without notice of such title; or against creditors of the buyer who have not levied upon or attached the goods but whose rights accrue subsequent to the conditional sale and who have extended credit to the buyer without notice thereof; unless such contract, or a copy thereof, shall be filed as hereinafter prescribed.

NOTES TO SECTION 2.

Statutes requiring the recording or filing of conditional sale contracts now exists in 29 states, namely, Alabama, Arizona, Colorado, Connecticut, Georgia, Florida, Iowa, Kansas, Maine, Minnesota, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Texas, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. In four other states recording statutes partially covering the filing of conditional sales have been passed, namely, in Massachusetts, Michigan, Oregon, and Pennsylvania. In Kentucky these contracts are treated as chattel mortgages and required to be recorded as such. To prevent injury to innocent persons who may rely on the buyer's apparent ownership, it seems desirable to insert this filing requirement in the uniform act. The burden on the seller is slight, and the benefit to the public is great.

The question of difficulty is, in whose favor shall this filing statute operate? Against what persons shall the reservation of title be void in the absence of recording?

As far as subsequent purchasers from the buyer are concerned, the statutes are practically unanimous in protecting them. It seems desirable for the sake of clearness to specify mortgagees and pledgees, even though the general heading of purchasers would doubtless include them.

The statutes of Alabama, Virginia, Washington, West Virginia, New Brunswick, Ontario, and Saskatchewan expressly require that the purchasers to be protected shall have paid "value." This element of value is probably implied in the word "purchaser," but it seems best to express it. There is no equity in protecting donees of the buyer by the recording section. In view of the great variety of definitions of "value," it is deemed wise to leave that question to be determined by the pre-existing local law and not to attempt to make uniform the law by a definition in this act.

It is well established that only purchasers without notice of the conditional nature of the buyer's interest should be protected. Express provisions to that effect are found in the statutes of Kansas, Minnesota, Missouri, Oklahoma, South Carolina, Virginia, West Virginia, New Brunswick, Ontario, and Saskatchewan. See also Anderson *vs.* Adams, 117 Ga. 919; First Nat. Bk. *vs.* Tufts, 53 Kans. 710; VanBuren *vs.* Stubbings, 149 Mich. 206; Barnes *vs.* Rawlings, 74 Mo. App. 531; Kelsey *vs.* Kendall, 48 Vt. 24; Perkins *vs.* Best, 94 Wis. 168.

As to creditors, in a few states, namely, Alabama, Georgia, North Dakota, South Carolina, and Washington, only creditors whose rights accrue subsequent to the conditional sale are protected, but in a great majority of the states the date of the extension of the credit is not

important. See the statutes of the various states and Patton *vs.* Phoenix Brick Co., 150 S. W. (Mo.) 1116; Hamilton *vs.* David C. Biggs Co., 179 Fed. 949 (C. C. Ohio); Corbett *vs.* Riddle, 209 Fed. 811 (C. C. A. Va.); Huffard *vs.* Akers, 52 W. Va. 21. In New York creditors are not protected at all by the recording act.

Creditors have been classed in a second way by the courts, namely, as lien creditors and general creditors. In many states there are decisions to the effect that only those creditors who have by judgment, or levy of an execution, or by attachment, secured a lien on the particular goods which were the subject-matter of the conditional sale, are protected. The general creditors of the buyer are not within the protection of the recording act. John Deere Plow Co. *vs.* Anderson, 174 Fed. 815 (C. C. A. Ga.); *In re* Atlanta News Pub. Co., 160 Fed. 519 (D. C. La.); *In re* Hager, 166 Fed. 972 (D. C. Iowa); Big Four Implement Co. *vs.* Wright, 207 Fed. 535 (C. C. A. Kans.); Crucible Steel Co. *vs.* Holt, 174 Fed. 127 (C. C. A. Ky.); Wilson *vs.* Lewis, 63 Neb. 617; Reischmann *vs.* Masker, 69 N. J. L. 353; Mechanics Bank *vs.* Gullett Gin Co., 48 S. W. (Tex.) 627; Malmo *vs.* Shubert, 79 Wash. 534; E. L. Essley Mach. Co. *vs.* Milwaukee Motor Co., 160 Wis. 300. In several states the statutes expressly protect lien creditors only. This is true in Alabama, Montana, Nebraska, New Jersey, Vermont, and Wyoming.

The statute as drafted protects both prior and subsequent creditors who have acquired a lien on the goods by levy or attachment. By such act they have in a certain sense become purchasers of the goods. They have acquired legal property rights in the goods, and, if they have done so innocently, they ought to be protected as against the conditional seller. Their equities are superior to his. General, unsecured creditors, on the other hand, unless they have advanced money or other property on the strength of the buyer's apparent ownership of these particular goods, have no equity as against the conditional seller. They have acquired no lien upon or property in the goods, and have not taken any step in reliance on the possession and apparent ownership of the buyer.

It is submitted that justice to all deserving creditors will be worked out if only secured or lien creditors and subsequent creditors who have relied on the buyer's apparent ownership are protected.

It is very generally held that creditors, in order to claim the protection of the statute, must have been without notice of the conditional nature of the buyer's rights at the time when their rights were fixed. See the statutes of Alabama, Arizona, Iowa, Nebraska, New Jersey, North Dakota, South Dakota, and Washington. See also Diamond Rubber Co. *vs.* Fourth Nat. Bk., 55 So. (Ala.) 1911; Jones *vs.* Clark, 20 Colo. 353; Reisman *vs.* Wester, 72 S. E. (Ga.) 942; F. P. Gluck Co. *vs.* Therme, 134 N. W. (Iowa) 438; Dyer *vs.* Thorstad, 35 Minn. 534; Norton *vs.* Pilger, 30 Neb. 860; Batchelder *vs.* Sanborn, 66 N. H. 192; *In re* Vandewater & Co., 219 Fed. 627 (D. C. N. J.); McPhail *vs.* Gerry, 55 Vt. 174; Secor *vs.* Close, 145 Pac. (Wash.) 56; Wolf Co. *vs.* Kutch, 147 Wis. 209.

In a majority of the states the contract or a copy may be filed. See the statutes of Arizona, Kansas, Michigan, Minnesota, Missouri, Montana, New York, North Dakota, Ohio, Oklahoma, Texas, Wisconsin, Wyoming, and Saskatchewan. In Alabama, Iowa, and New Jersey the contract itself must be recorded. In Nebraska, New Brunswick, Ontario, and Prince Edward Island the copy alone may be filed. In New Hampshire, Virginia, Washington, and West Virginia only a memorandum of the contract need be filed. To require that the original contract or a copy be filed seems best. Doubtless generally a copy

will be filed. It seems useless to restrict the seller to either the original or a copy. The object is to make public the terms of the sale. The exact words of the contract will do that better than any abbreviation or memorandum.

SECTION 3. [Place of Filing.] The conditional sale contract or copy shall be filed in the office where deeds of real property are recorded in the (city,) county (, or registration district) where the goods are delivered.

NOTES TO SECTION 3.

The filing statutes now in force are of two classes with respect to the place of record required. One requires record in a local office, such as the town clerk's office; the other class makes the county the unit of record. Connecticut, Maine, Massachusetts, Michigan, New Hampshire, New York (with some exceptions), Vermont, and Wisconsin have the town recording system. The twenty-three other states having recording statutes require record in the county office, where deeds are recorded and all important records with respect to real property are kept.

The county system has seemed the better, since the records in the county office will be kept in much more orderly fashion than in the town offices, and since the convenience of persons desiring to deal with the goods will be served quite as well by a record in the principal town or city of the county as if the record were located in some remote office in the country.

The next question to be decided is, which county shall be made the county of record? There are but two practical choices, namely, the county of the buyer's residence and the county of the delivery of the goods.

Connecticut, Iowa, Maine, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Ohio, South Carolina, South Dakota, Washington, Wisconsin, New Brunswick, Ontario, Prince Edward Island, and Saskatchewan (15 states and 4 Canadian provinces) require record in the district of the *buyer's residence.*

Arizona, Montana, North Dakota, Virginia, West Virginia, and Wyoming (6 states) record in the county where the goods were at the time of sale.

Oklahoma and Kansas (2 states) record where the goods shall be kept after the sale.

In Alabama, Georgia and Michigan a double record is required, one in the district of the buyer's residence and one in the district where the goods were delivered. In Texas the record may be either in the county of the buyer's residence or in the county of delivery.

The desideratum is to have a record in the county where the goods are permanently kept. It is there that innocent purchasers and creditors will be misled by the apparent ownership of the buyer. Record in the county of the buyer's residence is of little importance, unless the goods are kept there. The goods will be kept in most instances in the county where they are delivered. The county of delivery is easily ascertained. There can be no mistake about its identity. Where the buyer resides may be a question of some complexity.

It has seemed that the problem could best be solved by requiring filing in the county of delivery, and following that requirement by provisions respecting removal of the goods from the county of original delivery. Such latter provisions are made in Sections 10 and 11 of the act.

In most cases the goods will be delivered, the buyer will reside and the goods will be kept in one and the same county. Then but one filing will be required. In the instances where the county of the buyer's residence does not coincide with the county of delivery, record at the place of delivery will be more useful. Record at the buyer's residence will be of slight value.

If the goods are moved to a new county after the original delivery, the burden of two filings will be put on the seller, but the safety of the public justifies it. The seller is given 30 days after such removal to file the contract in the new county. This period in which to seek information as to removals, coupled with the penalty upon the buyer for removal without consent of the seller, will reduce to a minimum, it is believed, the danger to the seller and to the public from removals of goods.

In some states there are districts which are not within any county. Thus, Baltimore and St. Louis are, it is understood, not within the borders of any county. Conditional sale contracts in such cases would have to be filed in a city office and not in a county office. In other cases the unit of record is not the county, as in some cases in Massachusetts where a county is divided into two registration districts, and in Louisiana, where the parish is the unit. These special cases may be provided for by the insertion of the words "city" or "registration district," together with county. In most states the bracketed words "city" and "or registration district" may be omitted. This same question has been met in a similar way in some later sections of the act.

SECTION 4. [Fixtures.] If, at the time of such sale or thereafter, the goods are affixed to realty, the conditional sale shall be void, after the goods are so affixed, against subsequent purchasers or mortgagees of the realty, for value and without notice of the conditional seller's title, unless the conditional sale contract, or a copy thereof, together with a statement signed by the seller describing the realty and stating that the goods are affixed thereto, shall be filed in the office where a deed of the realty would be recorded.

NOTES TO SECTION 4.

In practically all American states a conditional seller who has reserved title to a chattel which is affixed by the vendee to his real property has no rights against a subsequent purchaser or mortgagee of the real property who has no notice of the conditional sale of the chattel. Price *vs.* Case, 10 Conn. 375; J. S. Schofield Sons Co. *vs.* Woodward, 72 S. E. (Ga.) 509; Allis-Chalmers Co. *vs.* City of Atlantic, 144 N. W. (Iowa) 346; Rowand *vs.* Anderson, 33 Kans. 264; Jenks *vs.* Colwell, 66 Mich. 420; Hopewell Mills *vs.* Taunton Sav. Bk., 150 Mass. 519, 521; Tibbotts *vs.* Home, 65 N. H. 242; Brennan *vs.* Whittaker, 15 Ohio St. 446; Washburn *vs.* Inter-Mountain Mining Co.,

109 Pac. (Ore.) 382; Union Bank *vs.* Wolf Co., 114 Tenn. 255, 4 Am. & Eng. Ann. Cases 1073; Davenport *vs.* Shants, 43 Vt. 546.

In four states comparatively recently statutes have been enacted declaring that the condition reserving title to fixtures shall be void as against subsequent purchasers or mortgagees of the real property who have no notice of the conditional sale, unless the conditional sale contract is recorded in the office where a deed of the land would be recorded. See the statutes of Massachusetts, New York, Oregon and Pennsylvania.

Section 4 above is modeled after these statutes. It seems desirable to give the conditional seller a chance to protect himself against dealers with the real estate by the making of a record. If this record is in the same office where deeds of real property are recorded, the labor of searching for conditional sale contracts on the part of the prospective buyer or mortgagee of the land will be slight.

The contract will, under the provisions of Sections 3 and 11, already be filed in the proper office if the seller performs his duty, for the contract will be recorded in the county office where deeds are recorded. Section 4 will place but a slight added burden on the seller where the goods are a fixture, namely, that of filing a statement that the goods are attached to described real property.

SECTION 5. [Railroad Equipment or Rolling Stock.] No contract for the conditional sale of railroad or street railway equipment or rolling stock shall be valid as against the purchasers, mortgagees, pledgees and creditors described in Section 2, unless the contract shall be acknowledged by the buyer in like manner as a deed of real property, and the contract, or a copy thereof, shall be filed in the office of the Secretary of State; and unless there shall be plainly and conspicuously marked upon each side of each engine or car so sold the name of the seller, followed by the word "owner."

NOTES TO SECTION 5.

Statutes making special provision for the conditional sale of railroad and street railway rolling stock and equipment are now found in 46 states. They are strikingly similar.

*Goods Covered by the Statutes.* The phrase most commonly used to describe the goods covered by these statutes is "railroad and street railway equipment and rolling stock." In a few states interurban equipment and rolling stock are specifically mentioned, and there seems to be no reason why they should not be included. In some states only railroad equipment and rolling stock are mentioned. The slight variations of wording are so numerous that they cannot be detailed here. The words used in Section 5 are supported by a majority of the statutes.

*Acknowledgment Required.* Acknowledgment is required in 40 of the 46 states having these railroad statutes. It seems desirable to give some formality to the contract, in view of the large amounts of money generally involved and the fact that record is required in a state office.

*Persons Protected.* The existing statutes, in most instances, make the reservation of title void as against judgment creditors and pur-

chasers in good faith. It seems desirable to give the protection of the statute, in case of failure to record, to the same persons named in the general filing statute herein, Section 2.

*Place of Record.* In 28 of the states the place of record is made the office of the Secretary of State and in four others record is required in that office and also in a county office. In view of the statewide nature of the business often involved and the importance of the contracts, state registration may be justifiable.

*Marking of Engines and Cars.* In all but four of the 46 states the engines and cars are required to be marked with the name of the seller and a statement indicating his ownership. This provision is continued in Section 5 above.

*Duration of Conditional sale Contracts of Railroad Equipment.* In 12 states the time during which these contracts can run is limited. In Arizona, Delaware, Minnesota, Montana, North Dakota, South Dakota, and Wisconsin the limit is 10 years; in Mississippi and Tennessee 15 years; in Maryland 20 years, and in Colorado and Kentucky 25 years. A provision requiring the refiling of these contracts at the end of ten years has been inserted in Section 8.

SECTION 6. [Conditional Sale of Goods for Resale.] When goods are sold to a retailer by a conditional sale contract, and the seller expressly or impliedly consents that the buyer may resell them prior to performance of the condition on which the property is to pass to the buyer, the condition shall be void against purchasers from the buyer for value in the ordinary course of business, and as to them such buyer shall be deemed the owner of the goods, even though the contract, or a copy thereof, shall be filed according to the provisions of this act.

NOTES TO SECTION 6.

This section attempts to state a rule of law quite widely recognized. Bass *vs.* International Harv. Co., 53 So. (Ala.) 1014; Flint Wagon Works *vs.* Malone, 81 Atl. (Del.) 502; Clarke Bros. *vs.* McNatt, 132 Ga. 610; Trousdale *vs.* Winona Wagon Co., 25 Idaho 131; Barbour *vs.* Perry, 41 Ill. App. 613; Winchester Wagon Works *vs.* Carman, 109 Ind. 31; Rogers *vs.* Whitehouse, 71 Me. 722; Spooner *vs.* Cummings, 151 Mass. 313; Pratt *vs.* Burhans, 84 Mich. 487; Columbus Buggy Co. *vs.* Turley, 73 Miss. 529; Baker *vs.* Tolles, 68 N. H. 73; Fitzgerald *vs.* Fuller, 19 Hun 180; Star Mfg. Co. *vs.* Nordeman, 118 Tenn. 384; Oconto Land Co. *vs.* Wallschlaeger, 155 Wis. 418. Where the seller attempts to reserve the property in himself and at the same time to allow a resale by a retailer in the ordinary course of business, he is doing two inconsistent things. A purchaser from a retailer in the ordinary course of business ought not to be obliged to examine the records to learn whether the retailer has title or whether title has been reserved under a conditional sale contract. That the goods have been put into the retailer's stock with the consent of the wholesaler is conclusive evidence that they are there for sale and that the retailer has title or the right to convey.

The mere constructive notice of the record of the contract ought not to prevail as against a buyer from a retailer in the ordinary course of business. Mortgagees, pledgees and creditors of the retailer

are, of course, bound by the provisions of the recording act and will have constructive notice of the conditional sale, but in the case of purchasers in the ordinary course of business, as distinguished from purchasers of the stock in bulk, no notice of the conditional sale should be effectual to bind them.

Public Acts of Michigan, 1915, p. 112, Sec. 1, requires that a contract for the conditional sale of goods to a retailer to be resold by him shall be recorded in order to be valid as against anyone except the seller and buyer. But in Michigan there is no general recording statute.

SECTION 7. [Filing and Recording.] The recording officer shall mark upon the contract or copy filed with him the day and hour of filing and shall file the contract or copy in his office for public inspection. He shall keep a book in which he shall enter the names of the seller and buyer, the date of the contract, the date of filing, a brief description of the goods, the price named in the contract and the date of cancellation thereof. Such book shall be indexed under the names of the seller and of the buyer. For filing and recording such contract or copy such officer shall be entitled to a fee of (ten cents), except that for filing and recording a contract described in Section 5 the Secretary of State shall be entitled to a fee of (one dollar).

NOTES TO SECTION 7.

In Minnesota, Montana, Nebraska, New York, Texas, Virginia, Washington, Wisconsin, Wyoming, New Brunswick, Ontario, Prince Edward Island, and Saskatchewan the statutes expressly provide as to the duties of the clerk receiving a conditional sale contract for filing. The provisions are, in the main, like those above indicated. The clerk would, in order to make the record effective, necessarily be obliged to have some such system of recording, but it seems better to require it expressly rather than to leave it to the discretion of the various officers concerned. Uniformity of style of record is of some importance.

The filing fee for ordinary contracts is 50 cents in Montana and Prince Edward Island; 25 cents in Nebraska, Virginia, Washington, Wyoming, and Saskatchewan; 12 cents in New York and Wisconsin, and 10 cents in Minnesota, New Brunswick, and Ontario. It is desirable to encourage sellers to file their contracts, and therefore the fee of 10 cents has been selected. The labor of the clerk will be very slight.

The fee for filing contracts with respect to railroad equipment is found to be $15 in two states, $10 in one state, $5 in seven states, $2 in four states, and $1 in four states. The fee of $1 seems adequate to compensate the Secretary of State.

The amount of the fee has been bracketed to indicate the possibility of local variation upon this point.

SECTION 8. [Refiling.] The filing of conditional sale contracts provided for in Sections 2, 3 and 4 shall be effective for a

period of three years only. The filing of the contract provided for by Section 5 shall be valid for a period of 10 years only. The validity of the record may in each case be extended for successive additional periods of one year each by filing a copy of the original contract prior to the expiration of each period, with a statement attached signed by the seller, showing that the contract is in force and the amount due thereon. Such copy, with statement attached, shall be filed and recorded in the same manner as a contract or copy filed and recorded for the first time, and the filing officer shall be entitled to a like fee as upon the original filing.

NOTES TO SECTION 8.

**In only a few jurisdictions are there provisions limiting the duration of the record of conditional sale contracts. In Minnesota the record is good for but six years, in Nebraska for five years, in Saskatchewan for two years, and in New York, Wisconsin and Wyoming for one year only. Notwithstanding the slight acceptance of this principle of refiling, it seems desirable to the draftsman to require a refiling after three years. The ordinary conditional sale contract will be performed or breached before that time. If a contract extends over a period longer than three years, a fresh record should be made at the end of the three years. Searchers should not be obliged to go back for an indefinite period to discover whether the title to a piano is in the possessor of it.**

**As shown in the notes to Section 5, in 12 states the validity of car trust contracts is limited, the periods ranging from 10 to 25 years. A longer time is ordinarily required for the performance of these contracts than for the performance of an ordinary conditional sale contract. It would seem that 10 years, with a provision for refiling at the end of that time, would be sufficient.**

SECTION 9. [Cancellation of Contract.] When the condition, precedent to the vesting of the property in the goods in the buyer, has been performed, the seller, upon demand by the buyer or any other person having an interest in the goods, shall execute and deliver to him a statement that the condition in such contract is performed and that the buyer has become the owner of the goods. A seller who, for ten days after a written demand, fails to deliver such a statement of satisfaction shall forfeit to the buyer five dollars ($5.00) and be liable for the actual damages suffered. The officer with whom the contract or copy is filed, upon presentation of such statement of satisfaction, shall file the same and note the cancellation of the contract and the date thereof on the margin of the page where the contract has been recorded. For filing and entering the statement of satisfaction the filing officer shall be

entitled to a fee of (ten cents), except that the Secretary of State shall be entitled to a fee of (fifty cents) for filing and entering a statement of the satisfaction of a contract described in Section 5.

NOTES TO SECTION 9.

**The procedure upon the cancellation of a conditional sale agreement, due to performance, is expressly provided for in but few states. In Minnesota, New York, Vermont and Virginia, and in New Brunswick and Saskatchewan, provisions similar to those made in Section 9 are set forth in the statutes. Here, as in the case of filing and refiling, it seems desirable to make the record uniform and to prescribe an orderly procedure to be followed in dealing with these contracts. The clerk would in most cases probably, without statutory direction, treat the question of cancellation as above provided, but it is advantageous to make certain such treatment.**

**The fees for the cancellation of the railroad equipment contracts, as set forth in the present statutes, range from three dollars to 50 cents. In the majority of states in which provisions have been found, namely, in 12, the fee is one dollar. The fee of 50 cents seems adequate to compensate the Secretary of State for his labor, and seems in correct proportion to the fee of one dollar for filing the contract.**

SECTION 10. [Prohibition of Removal or Sale.] No buyer under a conditional sale contract shall remove the goods from a county in which the contract or a copy thereof is filed, prior to the performance of the condition on which he is to become the owner of the goods, except for temporary purposes, unless the buyer, before such removal, shall give the seller written notice of the place to which the goods are to be removed; nor shall the buyer, prior to the performance of the condition upon which he is to become the owner of the goods, sell, mortgage or otherwise dispose of his interest in the goods, unless the buyer, or the person to whom he has sold, mortgaged or otherwise disposed of the goods, shall notify the seller in writing of the name and address of the person to whom the goods are sold, mortgaged or otherwise transferred, within five days after such sale, mortgage or disposal. If any buyer does so remove, sell, mortgage or dispose of such goods without such notice, the seller may take possession of the goods and deal with them as in case of default in payment of part or all of the purchase price. The provisions of this section regarding the removal of goods shall not apply, however, to the goods described in Section 5.

NOTES TO SECTION 10.

**Unless there is a record of the conditional sale contract in the county in which the goods are located, the public is apt to be defrauded. Innocent buyers and chattel mortgagees will naturally**

examine only the records of the county in which the goods are located. They are not apt to know where the goods were originally delivered, or where the possessor of them lived, when he bought them. It seems desirable to compel the seller to make a new record of the contract when the goods are moved into a new county, or for the first time brought into the state. In order that it may be reasonable to compel the seller to make this record, every effort must be made to give the seller notice of the removal. He will naturally learn in many cases of such removal, because he will be collecting the part payments and will be looking for the buyer. But if a civil penalty is placed upon removal by the buyer without notice to the seller, the chances of the seller knowing of such removal and being able to file the contract in the new county will be greatly increased. In view of the danger to the seller if the goods are taken into a new county where there is no record, the penalty of allowing the seller to retake the goods as on a default, does not seem too harsh.

In Texas the seller is allowed to retake the goods if the buyer removes them from the county without his consent. In Vermont for the removal of the goods from the state without the seller's consent the buyer may be subjected to a penalty of twice the value of the goods. In Saskatchewan removal from the registration district without 20 days' written notice to the seller is prohibited under penalty of $100 fine.

It seems unreasonable to compel the buyer to get the consent of the seller to a removal to a new county or a new state. Such consent might be withheld unjustly by the seller. If the seller knows of the removal, he can refile the contract. Such refiling is what is desired, not an absolute prohibition against moving the goods about from place to place.

Conditional sale contracts frequently contain provisions prohibiting removal and allowing retaking by the seller on that account, and such provisions have been enforced by the courts. Hall *vs.* Draper, 20 Kans. 137.

The interest of the buyer ought to be assignable before complete payment, but the assignment is of so much importance to the seller that he should receive notice of it as soon as possible. The section requires notice to be given under penalty of allowing the seller to treat the buyer as if in default. If the seller is to look to another than the original buyer for his payments, he should know that fact as soon as possible. If the seller is not obliged to look to that other for the payments, he should know that possession of the goods has passed to another or that another claims some interest in the goods. The statutes of at least 27 states make a sale by the buyer criminal, in some cases merely where such sale is without the written consent of the seller, and in others where the sub-sale or other transfer is with fraudulent intent.

SECTION 11. [Refiling on Removal.] When the condition precedent to the vesting of the property in the goods has not been performed, and the goods are removed by the buyer from a (city,) county (, or registration district) in this state to another (city,) county (, or registration district) in this state in which such contract, or a copy thereof, is not filed, or are removed from another state into a (city,) county (, or registration district) in

this state where such contract or copy is not filed, the reservation of the property in the seller shall be void as to the purchasers, mortgagees, pledgees and creditors described in Section 2, unless the conditional sale contract, or a copy thereof, shall be filed in the (city,) county (, or registration district) to which the goods are removed, within 30 days after such removal, in the office where deeds of real property located in such (city,) county (, or registration district) are recorded. The provisions of this section shall not apply, however, to the goods described in Section 5.

NOTES TO SECTION 11.

As stated previously, the county where the goods are located is the county where it is important to have the record for the purpose of protecting the public. In a few jurisdictions the statutes provide that the seller must refile the contract on a removal of the goods to a new county and on the bringing of the goods into the state for the first time. This refiling is not required to be immediate. In Alabama the refiling must be within 30 days after the removal, in Georgia within six months, in Mississippi within 12 months, in Texas within four months, in West Virginia within three months, and in Saskatchewan within 60 days. It might be unreasonable to require the seller to make a new record at once. He should be given time to learn of the removal and to prepare and send his papers for record. Most sellers collect part payments frequently and will thus learn of the removal. The provisions of Sections 10 and 12 will assist in bringing the removal to the seller's attention. The thirty-day period within which the notice must be filed seems not too strict a requirement.

A large number of cases have arisen in which the principal question was as to the law which controlled where goods were removed from one state to another. It seems to be settled that if the goods are sold in state A for the purpose of being removed to state B, the law of state B will control regarding the recording of the conditional sale contract. Summers *vs.* Carbondale Mach. Co., 173 S. W. (Ark.) 194; Beggs *vs.* Bartels, 73 Conn. 132; David Bradley & Co. *vs.* Kingman Implement Co., 112 N. W. (Neb.) 346; Lanston Monotype Mach. Co. *vs.* Curtis, 224 Fed. 403; Potter Mfg. Co. *vs.* Arthur, 220 Fed. 843; *In re* Gray, 170 Fed. 638. But if the goods are sold under a conditional sale contract in state A and delivered in state A, and after some use they are removed to state B, there is a great conflict of opinion. In the following cases the law of state A, the state where the contract was made, controlled as to the conflicting rights of the seller and claimants under the buyer: Fuller *vs.* Webster, 95 Atl. (Del.) 335; Harper *vs.* People, 2 Colo. App. 177; Waters *vs.* Cox, 2 Bradw. (Ill.) 129; Baldwin *vs.* Hill, 4 Kans. App. 168; Gross *vs.* Jordan, 83 Me. 380; Davis *vs.* Osgood, 69 N. H. 427; Warnken *vs.* Chisholm, 8 N. D. 243; Studebaker Bros. Co. *vs.* Mau, 13 Wyo. 358. In the following cases the law of state B, the state to which the goods were removed, controlled as to the formalities necessary to protect the seller's rights under the conditional sale contract: Corbett *vs.* Riddle, 209 Fed. 811; Public Parks Amus. Co. *vs.* Embree-McLean Co., 64 Ark. 29; Weinstein *vs.* Freyer, 93 Ala. 257; North *vs.* Goebel, 138 Ga. 739; Marvin Safe Co. *vs.* Norton, 48 N. J. L. 410; Emerson Co.

*vs.* Proctor, 97 Me. 360; National Cash Register Co. *vs.* Paulson, 16 Okla. 204; Sanger *vs.* Jesse French Co., 21 Tex. Civ. App. 523.

If a uniform law with respect to conditional sales were adopted, and this law provided for the refiling of the contract upon removal of the goods, the difficulties illustrated by these cases would be avoided. A slight extra burden would be placed upon the seller in refiling the contract, but much litigation and loss on the part of the innocent public would be prevented. It is believed that the seller will, in most cases under this act, know of the removal of the goods out of the county or out of the state. If he does not refile his contract for the protection of the public in the uew jurisdiction, he should be the loser and not innocent buyers, mortgagees or creditors.

SECTION 12. [Fraudulent Injury, Concealment, Removal or Sale.] Every buyer of goods under a conditional sale contract who, with intent to defraud, prior to the performance of the condition upon which he is to become the owner of the goods, shall injure, destroy or conceal the goods, or remove them to a county where the contract, or a copy thereof, is not filed, or shall sell, mortgage or otherwise dispose of such goods, shall be guilty of a crime and, upon conviction thereof, shall be imprisoned in the county jail for not more than one year or be fined not more than twice the value of the goods or both.

NOTES TO SECTION 12.

Provisions of this sort imposing a criminal penalty for acts done with a fraudulent intent and calculated to destroy the seller's security are very common. It seems desirable to insert such a section for the prevention of fraud upon the seller, and also fraud upon the innocent public in some cases.

In Kansas, Missouri, Nevada, New Jersey, Ohio, Oregon, and Washington the statute makes fraudulent destruction of the goods a crime.

In Kansas, Missouri, Oregon, South Dakota, and Washington fraudulent injury of the goods is a crime.

In Connecticut, District of Columbia, Idaho, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Missouri, Nevada, New Hampshire, New Jersey, New York, North Dakota, Ohio, Oregon, South Dakota, Tennessee, and Washington fraudulent concealment of the goods is covered by the criminal statute.

In Arkansas, California, Connecticut, District of Columbia, Florida, Idaho, Maryland, Michigan, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, North Dakota, Ohio, Oregon, South Dakota, Virginia, Washington, and Wyoming the statutes make fraudulent removal a crime.

In Alabama, Arkansas, California, Colorado, Connecticut, District of Columbia, Florida, Georgia, Idaho, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Ohio, South Dakota, Tennessee, Vermont, Virginia, Washington, and Wyoming the fraudulent sale or other disposal of the goods is a crime.

The fines imposed vary from $1000 as a maximum in Nebraska, Nevada, New Hampshire, and North Dakota to $5.00 as a minimum in Virginia. The periods of imprisonment to which the criminal may be

sentenced vary from 10 years as a maximum in Nebraska to 15 days as a minimum in Kentucky and Virginia. The one year period of imprisonment seems reasonable as a maximum and it seems desirable to make the possible fine depend upon the value of the goods.

Some of these criminal statutes apply specifically only to conditional sales, others to conditional sales and chattel mortgages, and still others by their express wording might seem to be confined to cases of chattel mortgages. The latter class are inserted here, since the offense in the case of fraud on the part of a chattel mortgagee is essentially similar, and doubtless in many cases the statutes have been held to apply to conditional sales by implication.

SECTION 13. [Retaking Possession.] Whenever the buyer, under a conditional sale contract, shall be in default in the payment of any sum due under the contract, or in performance of any other condition which the contract requires him to perform in order to obtain the property in the goods, the seller may retake possession thereof whether such right is expressly reserved to him or not.

NOTES TO SECTION 13.

This right on the part of the seller is an elementary one. It is generally reserved in the contract, but it is deemed wise to make it a statutory right, rather than a right to be contracted for. This right is restricted and limited by the following sections, which prescribe what the seller must do after resuming possession.

It is deemed unnecessary to insert a statement that the seller may resume possession without process, if he can do so without breach of the peace; but that he must resort to legal process if he cannot obtain the goods without breach of the peace.

SECTION 14. [Redemption.] After retaking possession of the goods the seller shall retain them for 30 days in the (city,) county (, or registration district) in which they were located at the time of retaking, during which time the buyer, upon payment or tender of the amount due under the contract at the time of retaking, and interest and the expenses of retaking, keeping and storage, may redeem the goods and become entitled to take possession of them without process, and to continue in the performance of the contract as if no default had occurred. Upon demand by the buyer, the seller shall furnish to the buyer a written statement of the sum due under the contract and the expenses of retaking, keeping and storage. For failure to furnish such statement within a reasonable time after demand, the seller shall forfeit to the buyer ten dollars ($10), and also shall be liable to him for damages actually suffered because of such failure.

NOTES TO SECTION 14.

The idea of the draftsman in preparing the following sections has been that a conditional sale is practically equivalent to a chattel mortgage, and that the rights of buyer and seller in the conditional sale ought to coincide with those of chattel mortgagor and mortgagee as nearly as possible. Hence the buyer is given the right of redemption after default. It seems but little hardship on the seller to compel him to retain the goods within reach of the buyer for 30 days and allow the buyer to redeem the goods, if he can raise the money. In 30 days there should be opportunity to borrow the money, or to obtain it through the receipt of a monthly salary or wage. It is essential that the buyer should be able to discover just how much is claimed to be due on the contract and as a result of the retaking. The seller should furnish a written statement of this. The fixing of a small penalty for failure to deliver such a statement may stimulate promptness on the part of the seller.

In Maine, Massachusetts, Nebraska, New York, Pennsylvania, Vermont, Wisconsin, New Brunswick, Ontario, Prince Edward Island, and Saskatchewan the statutes expressly provide for redemption by the buyer, the period of redemption varying from 15 days to 40 days. In some states in the absence of statute the courts have allowed the buyer the right of redemption. Miller *vs.* Steen, 30 Cal. 407; Liver *vs.* Mills, 101 Pac. (Cal.) 299; Puffer *vs.* Lucas, 112 N. C. 377.

SECTION 15. [Resale by Seller.] If the buyer does not redeem the goods within 30 days after the seller has retaken possession, the seller shall sell them for cash at a public sale, in the (city,) county (, or registration district) where they were at the time of the retaking, such sale to be held not more than 45 days after such retaking. The seller shall give to the buyer not less than 10 days' notice of the resale, and shall also give public notice by publication in a newspaper printed within the (city,) county (, or registration district), and by at least three notices publicly posted within the (city,) county (, or registration district), such notices to be published and posted at least five days before the sale.

NOTES TO SECTION 15.

In many states the buyer, upon default, forfeits the part payments already made, if the seller retakes the goods. Bray *vs.* Lowery, 163 Cal. 256; Herbert *vs.* Rhodes-Burford Furniture Co., 106 Ill. App. 583; Fleck *vs.* Warner, 25 Kans. 492; Lorain Steel Co. *vs.* Norfolk, 187 Mass. 500; Thirlby *vs.* Rainbow, 93 Mich. 164; C. W. Raymond Co. *vs.* Kahn, 124 Minn. 426; Duke *vs.* Shackleford, 53 Miss. 552; Richards *vs.* Hellen, 133 N. W. (Iowa) 393; Stearns *vs.* Drake, 24 R. I. 272. But in several of these cases the holding was merely that the seller need not return the part payments before bringing replevin for the goods, and the court hinted that the buyer might later recover his part payments, less a reasonable reduction for the use of and damage to the goods. In other cases it has been held that the buyer is entitled to have his part payments, less rent and damage charges, returned to him when the buyer retakes the goods. Hill *vs.* Townsend,

69 Ala. 286; Commercial Puby. Co. *vs.* Campbell Printing-Press Co., 111 Ga. 388; Quality Clothes Shop *vs.* Keeney, 106 N. E. (Ind.) 541; Shafer *vs.* Russell, 28 Utah 444. The tendency of the courts is to avoid the old hard and fast rule that the buyer forfeited his part payments on default. The courts recognize the equity of the buyer in the goods on account of his part payments. In some states they have had to resort to indirect methods of giving the buyer the benefit of this equity. In other states they have felt bound by the old strict rule of forfeiture. It seems desirable to do away with this doubt and indirection and to admit clearly the right of the buyer to have the benefit of his part payments after default.

In a few states statutory schemes for relieving the buyer of the hardship of forfeiture have been provided. These may be divided into three classes. There are first the states which provide that the seller may not retake the goods for default, unless he returns to the buyer the part payments, less a reasonable amount for the use of the property and damage to it. Such systems prevail in Missouri and Ohio. In Missouri the right to the return of part payments on retaking exists in all cases. In Ohio only when the buyer has paid an amount in excess of twenty-five per cent of the purchase price must the seller return part payments on retaking. This scheme is open to the objection that it is difficult to determine what the value of the use of the goods has been and whether they have been damaged or not. The seller is apt to impose on the buyer and retain too much of the part payments under a claim of rent and alleged damage to the goods.

In Massachusetts and Pennsylvania the right to have a resale is optional with the buyer. In Massachusetts, where seventy-five per cent or more of the price has been paid, the buyer may demand a resale, and will be entitled to the surplus in the hands of the seller after the payment of the full price and expenses. This statute applies only to furniture and other household effects. In Pennsylvania the statute respecting the conditional sale of chattels to be attached to real property provides that the buyer may, within 10 days after the retaking, demand a resale of the property and shall be entitled to any surplus in the hands of the seller after the satisfaction of the price and expenses. In Vermont the seller may resell the goods, and if he does so, the buyer shall be entitled to the surplus thus created. The option in Vermont is with the seller.

In a third class of states resale is compulsory. These states are New York and Tennessee. In these states the seller is obliged, after retaking the goods, to resell them and return to the buyer the excess in his hands after the payment of the price and the expenses of resale. This compulsory resale insures the return of all part payments equitably due him. If he has contracted for goods at a price of $100 and has paid $75 at the time of default and retaking, and the goods on the compulsory resale bring but $25, the buyer is entitled to no return of part payments. The use he has had of the property has evidently been worth $75, for the goods have become so worn and damaged that they will bring only $25. But if, in the case supposed, the goods bring $50 on the resale, it is evident that the buyer ought to have returned to him $25, less the expenses of resale. If such return is not made, the seller will have received $25 unjustly and the buyer will have been mulcted in that amount because of his default.

This latter system, namely, that of compulsory resale, is the one adopted in the proposed statute. It is believed to be better than the optional resale plan adopted in Massachusetts and Pennsylvania, because it works automatically. Many buyers of goods on conditional

sale contracts are men of small means, little versed in the law and unfamiliar with correct business methods. They will not, it is believed, be apt to take advantage of an optional resale provision. They will not ordinarily know of it. It may be said that, if they are careless with respect to their own rights, they do not deserve protection. But the answer is that they frequently will not know what their own rights are, that they are a class of buyers who are frequently very needy and ignorant.

In New York the resale must take place within 60 days after the retaking of the goods. This seems a needlessly long period. It is believed that, if the buyer does not redeem the goods, the seller should be allowed to dispose of the matter by resale as soon as he can do so with due regard to a protection of the buyer's rights. Fifteen days after the period of redemption has expired seems long enough in which to advertise the resale. In Tennessee the seller must advertise the property for resale within 10 days after the retaking.

The length of notice of the resale which the seller must give varies in the different states. In Massachusetts the requirement is three days' newspaper notice; in New York 15 days' notice to the buyer is required; in North Carolina 10 days' notice to the buyer and 20 days' public notice by posting; in Tennessee 10 days' notice to the public by three posted notices; in Vermont 10 days' notice to the buyer and 10 days' notice to the public by two posted notices.

The notices required by the proposed Section 15 are believed to be reasonable and to give the buyer and the public sufficient time to prepare to attend the sale ready to bid, if they desire to do so.

In New Brunswick, Ontario, and Prince Edward Island five days' personal notice to the buyer or seven days' written notice is required. In Saskatchewan the buyer is entitled to eight days' personal notice of the resale or 10 days' written notice. The resale in these Canadian provinces is optional with the seller and not for the purpose of awarding the buyer the surplus after the payment of the price and expenses.

SECTION 16. [Proceeds of Resale.] The proceeds of the resale shall be applied, first, to the payment of the expenses thereof, secondly, to the payment of the expenses of retaking, keeping and storing the goods, and thirdly, to the satisfaction of the balance due on the purchase price. Any sum remaining, after the satisfaction of such claims, shall be paid to the buyer.

NOTES TO SECTION 16.

The provisions of this section are supported by the statutes of Massachusetts, New York, Pennsylvania, Tennessee and Vermont, the only statutes in which resale as a means of estimating the amount to be returned to the buyer is recognized. That the buyer should have the surplus, which represents his equity in the goods, is in accord with the chattel mortgage theory of the conditional sale.

SECTION 17. [Deficiency on Resale.] If the proceeds of the resale are not sufficient to defray the expenses thereof, and also the expenses of retaking, keeping and storing the goods and the bal-

ance due upon the purchase price, the seller may recover the deficiency from the buyer.

NOTES TO SECTION 17.

This section follows out the mortgage theory. The chattel mortgagee can, of course, recover any deficiency after foreclosing his mortgage. The result produced by this section has been reached in a number of cases. Matteson *vs.* Equitable Min. & Mill Co., 143 Cal. 436; Kinney *vs.* Avery & Co., 80 S. E. (Ga.) 663; Christie *vs.* Scott, 94 Pac. (Kans.) 214; Dederick *vs.* Wolfe, 68 Miss. 500; McCormick Mach. Co. *vs.* Koch, 8 Okla. 374; Ascue *vs.* C. Aultman & Co., 2 Willson (Tex.), Sec. 947. While an action for the entire price due has often been considered inconsistent with a retaking of the goods, a retaking of the goods ought not to be considered as an election to trust to the goods alone for the recovery of the price. The retaking constitutes an election to look to the security given by the buyer for the payment of the price. After resort to that primary source of payment the seller ought to be allowed to proceed to the secondary source, the promise of the buyer to pay. If the buyer is given a right to recover the surplus on the resale, the seller must be allowed to recover his full purchase price.

SECTION 18. [Action for Price.] The seller may sue for the whole or any installment of the purchase price, as the same shall become due under the conditional sale contract.

NOTES TO SECTION 18.

This section is elementary, but is inserted for the sake of a complete enumeration of the rights of the seller against the buyer. The seller's only remedies are an action for the price or the retaking of the goods or both. Of course, no attempt is made to state the rights of the seller against third persons, as, for example, the right to maintain trover or replevin. Such rights are the same as those of any other owner of personal property.

SECTION 19. [Election of Remedies.] The retaking of possession, as provided in Section 13, shall be deemed an election by the seller to rescind the contract of sale and the buyer shall not be liable thereafter for the price, except as provided in Section 17. The bringing of an action by the seller for the recovery of any instalment or the whole of the price shall not be deemed inconsistent with a later retaking of the goods, as provided by Section 13.

NOTES TO SECTION 19.

It is generally agreed that the retaking of the goods by the seller constitutes an election which prevents him from later suing for the purchase price. Nashville Lumber Co. *vs.* Robinson, 121 S. W. (Ark.) 350; Muncy *vs.* Brain, 110 Pac. (Cal.) 945; Manson *vs.* Dayton, 153 Fed. 258; Turk *vs.* Carnahan, 25 Ind. App. 125; Perkins *vs.* Grobben, 116 Mich. 172; A. F. Chase & Co. *vs.* Kelly, 146 N. W. (Minn.) 1113;

Madison Live Stock Co. *vs.* Osler, 39 Mont. 244; Nelson *vs.* Gibson, 143 App. Div. (N. Y.) 894; Kelley Co. *vs.* Schlimme, 220 Pa. 413; Stewart & Holmes Drug Co. *vs.* Ross, 74 Wash. 401. This seems correct, because the act of retaking amounts in practically all cases to a rescission of the contract. The buyer ought not thereafter to be liable for the price, unless the security which he has given for the payment of the price, the goods themselves, proves insufficient to compensate the seller. In Section 17 the seller is allowed to recover the deficiency after a resale. If he retakes the property, he is deemed to have elected to look to the goods as his primary security. If that should fail, he may have the secondary remedy of recovering the deficiency from the buyer. But a concurrent suit for the entire price does not seem justifiable. There are a few instances in which the retaking of goods has been held not to amount to a rescission of the contract, but merely to constitute a taking of the goods as agent for the buyer and for the better security of the seller. These cases are very rare and their correctness questionable. The practical construction put upon a retaking by the parties is that the contract is thereafter off.

It seems obvious that action for a single instalment of the price, not the final instalment, does not amount to an election to treat the buyer as the owner of the goods. The buyer is not, according to the most essential term of the contract, to become the owner until he has paid the price. The recovery of a single instalment is perfectly consistent with the payment of the further instalments by the buyer and the complete performance of the contract. The recovery of such instalments ought not, therefore, to preclude the seller from retaking the goods later, in case of default. Haynes *vs.* Temple, 198 Mass. 372.

Upon the question of the effect of bringing an action for the entire balance of the price due, the authorities are not harmonious. The prevailing view is that the commencement of an action for the entire price prevents a retaking of the goods at a later time. Butler *vs.* Dodson & Son, 78 Ark. 569; Waltz *vs.* Silveira, 25 Cal. App. 717; North Robinson Dean Co. *vs.* Strong, 25 Idaho 721; Smith *vs.* Barber, 153 Ind. 322; Richards *vs.* Schreiber, 98 Iowa 422; Bailey *vs.* Hervey, 135 Mass. 172; Alden *vs.* Dyer, 92 Minn. 134; Frederickson *vs.* Schmittroth, 112 N. W. (Neb.) 564; Orcutt *vs.* Rickenbrodt, 42 App. Div. (N. Y.) 238; Dowagiac Mfg. Co. *vs.* Mahon, 13 N. D. 516; Sioux Falls Adjustment Co. *vs.* Aikens, 142 N. W. (S. D.) 651; Winton Motor Carriage Co. *vs.* Broadway Automobile Co., 118 Pac. (Wash.) 817. The contrary view has been maintained in E. E. Forbes Piano Co. *vs.* Wilson, 144 Ala. 586; Jones *vs.* Snider, 99 Ga. 276; Foster *vs.* Briggs Co., 98 S. W. (Ind. Terr.) 120; Westinghouse Co. *vs.* Auburn Co., 76 Atl. (Me.) 897; Campbell Mfg. Co. *vs.* Rockaway Pub. Co., 56 N. J. L. 676. The latter view is adopted in the proposed uniform act. In support of the former view it may be said that the only theory on which the seller can demand the full price is that the buyer has become the owner of the goods. That is the express stipulation of the contract, that passage of property and payment of the price are to be concurrent. When the seller, by bringing an action for the price, affirms that the price is due, he must accept the logical consequent, namely, that the goods belong to the buyer.

But the minority view and the one adopted in Section 19 seem more reasonable and in accord with the chattel mortgage theory of a conditional sale. If an action for the price bars a later retaking of the goods, the seller will never dare to sue for the price and run the

risk of getting a worthless judgment and losing his claim upon the goods. Just as an action for the chattel mortgage debt does not bar the foreclosure of the chattel mortgage at a later time, so an action for the purchase price under a conditional sale should not bar a later reliance on the reservation of the property in the goods as security.

SECTION 20. [Recovery of Part Payments.] If the seller, after retaking the goods, fails to comply with the provisions of Sections 14, 15 and 16, the buyer may recover from the seller all payments which have been made under the contract, with interest.

NOTES TO SECTION 20.

In the two states which have a compulsory resale provision, namely, New York and Tennessee, the penalty for failure to carry out the resale provisions according to law is that the buyer may recover his part payments. Some penalty is necessary in order to insure that the resale will take place. This penalty seems fair. If the seller keeps the goods and neglects the resale provision, it probably means that the goods are not worn or damaged to any great extent and that their value is practically the same as when the conditional sale was made. It would be unjust to allow the seller to keep these undamaged goods and also retain the part payments of the buyer. The buyer's equity should be protected either by a resale or by a return of his part payments.

In Massachusetts, where the buyer may, in some cases, demand a resale, the penalty for failure to resell is that the right of redemption on the part of the buyer is not foreclosed. In Pennsylvania, where a similar right on the buyer's part to demand a resale exists, there seems to be no penalty for failure to resell after demand.

SECTION 21. [Waiver of Statutory Protection.] No act or agreement of the buyer at the time of the making of the contract, nor any agreement or statement by the buyer in such contract, shall constitute a valid waiver of the provisions of Sections 14, 15 and 16.

NOTES TO SECTION 21.

This section is supported by decisions in three of the states having resale and redemption provisions for the benefit of the buyer. Desseau *vs.* Holmes, 187 Mass. 486; Drake *vs.* Metropolitan Mfg. Co., 218 Mass. 112; Crowe *vs.* Liquid Carbonic Co., 208 N. Y. 396; Massillon Engine & Thresher Co. *vs.* Wilkes, 82 S. W. (Tenn.) 316. In the absence of such a provision unscrupulous sellers would do away with the effect of the statute by waivers printed in small type in the contract. No act should constitute a waiver unless performed after the contract of conditional sale is complete. It seems desirable to provide against waivers outside the contract, but at the time of the making of the contract. Such a waiver, by means of a separate receipt, was attempted in Desseau *vs.* Holmes, *supra.*

SECTION 22. [Additional Rights of Buyer.] The buyer under a conditional sale contract, when not in default, shall have the

right to retain possession of the goods, and he shall also have the right to acquire the property in the goods on the performance of the conditions of the contract. The seller shall be liable to the buyer for all warranties made in the conditional sale contract, whether the property in the goods has passed to the buyer at the time of the breach of such warranties or not.

NOTES TO SECTION 22.

This section is inserted merely for the sake of completeness. The remedies which are common to all buyers of goods, whether the contract be conditional or unconditional, are left to the Uniform Sales Act or to the prevailing common law. The courts have found some difficulty in fixing the rights of the parties where a warranty has been made in a conditional sale contract. Rogers & Thornton *vs.* Otto Gas Engine Works, 7 Ga. App. 587; W. W. Kimball Co. *vs.* Massey, 126 Minn. 461; Peuser *vs.* Marsh, 167 App. Div. (N. Y.) 604; Cooper *vs.* Payne, 186 N. Y. 334; Blair *vs.* A. Johnson & Sons, 111 Tenn. 111. If the seller's promise with respect to the goods has been broken, it is submitted that the buyer ought to be allowed to recover damages suffered by that breach, whether the buyer has become the owner of the goods or not.

SECTION 23. [Loss and Increase.] The risk of injury or loss shall rest upon the buyer after delivery of the goods to him. The increase of goods sold under a conditional sale contract shall be subject to the same conditions as the original goods.

NOTES TO SECTION 23.

The rule with respect to risk of loss is that adopted by the Uniform Sales Act and by a great majority of the states. Uniform Sales Act, Sec. 22; Blue *vs.* American Soda Fountain Co., 43 So. (Ala.) 709; Hollenberg Music Co. *vs.* Barron, 140 S. W. (Ark.) 582; O'Neil-Adams Co. *vs.* Eklund, 89 Conn. 232; Phenix Ins. Co. *vs.* Hilliard, 52 So. (Fla.) 799; Jessup *vs.* Fairbanks, Morse & Co., 78 N. E. (Ind.) 1050; Burnley *vs.* Tufts, 66 Miss. 48; Tufts *vs.* Wynne, 45 Mo. App. 42; Charles A. Stickney Co. *vs.* Nicholas, 152 N. W. (Neb.) 554; Collerd *vs.* Tully, 78 N. J. Eq. 557; Nat. Cash Reg. Co. *vs.* South Bay Club House Ass'n, 64 Misc. (N. Y.) 125; Whitlock *vs.* Auburn Lumber Co., 145 N. C. 120; Harley *vs.* Stanley, 105 Pac. (Okla.) 188; Carolina, etc., Co. *vs.* Unaka Springs Lumber Co., 130 Tenn. 354; Lavalley *vs.* Ravenna, 78 Vt. 152; Exposition Arcade Corp. *vs.* Lit Bros., 75 S. E. (Va.) 117. It seems desirable to insert this section in the Uniform Conditional Sales Act, although there may be a duplication of legislation in states where the Uniform Sales Act is already in force. The Uniform Sales Act does not expressly refer to conditional sales, but only to sales where the title is reserved as security for the payment of the price. Furthermore, states which have not adopted the Uniform Sales Act may adopt the Uniform Conditional Sales Act.

It is well established that the increase of goods sold under a conditional sale remain the property of the seller until the performance of the condition and then pass to the buyer with the original goods. Anderson *vs.* Leverette, 116 Ga. 732; Allen *vs.* Delano, 55 Me. 113; Desany *vs.* Thorp, 70 Vt. 31.

SECTION 24. [Act Prospective Only.] None of the provisions of this Act shall apply to conditional sales made prior to the taking effect of this Act.

SECTION 25. [Rules for Cases not Provided for.] In any case not provided for in this Act, the rules of law and equity, including the law merchant, and in particular the rules relating to the law of principal and agent and to the effect of fraud, misrepresentation, duress or coercion, mistake, bankruptcy, or other invalidating cause, shall continue to apply to conditional sale contracts.

NOTES TO SECTION 25.

**This section is modeled after Sec. 73 of the Uniform Sales Act and is inserted for the sake of completeness and clarity.**

SECTION 26. [Uniformity of Interpretation.] This Act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

SECTION 27. [Title of Act.] This Act may be cited as the Uniform Conditional Sales Act.

SECTION 28. This Act shall take effect.....

Respectfully submitted,
*George G. Bogert.*

CORNELL UNIVERSITY COLLEGE OF LAW,
ITHACA, N. Y., JUNE 7, 1916.

# Proposed Uniform Conditional Sales Act

## With Explanatory Notes

## (Second Tentative Draft)

to be submitted to

The National Conference of Commissioners on Uniform State Laws

at

Saratoga Springs, N. Y., August 29, 1917

The following resolution was adopted by The National Conference of Commissioners on Uniform State Laws at Salt Lake City, August 11, 1915:

"*Resolved,* That the subject of Conditional Sales Contracts be referred to the Committee on Commercial Law for consideration, with direction to draft a Uniform Act on that subject, if in its judgment it should seem wise, and to employ such expert assistance as it deems proper."

In accordance with this resolution, the committee retained the services of Professor George G. Bogert, of the Cornell University College of Law, who has prepared the tentative draft of the act. This draft was submitted to the Conference held in Chicago, August 23-29, 1916, and debated section by section. It was then recommitted to the Committee on Commercial Law.

The second tentative draft, revised by Professor Bogert and now submitted, represents the conclusions of the committee in the light of the debate of the Conference. They recommend the adoption of the following resolution:

"*Resolved,* By The National Conference of Commissioners on Uniform State Laws that the second tentative draft of an Act to make Uniform the Law of Conditional Sales be and the same is hereby approved, and is submitted to the legislatures of the different states for enactment."

WALTER GEORGE SMITH,
*Chairman.*

*Philadelphia, July 5, 1917.*

## COMMITTEE ON COMMERCIAL LAW.

WALTER GEORGE SMITH, *Chairman,*
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Minneapolis, Minn.

HON. WILLIAM H. STAAKE,
President of the Conference (*ex officio*).

## PROPOSED UNIFORM CONDITIONAL SALES ACT.

### Introductory Notes.

The following is a list of the statutes of the various jurisdictions which have legislated upon the subject of conditional sales. Specific references to these statutes are not given in the explanatory notes appended to each section. Should any commissioner desire to examine the statutory provision in any state upon any particular subject, he can readily do so by a reference to this table of statutes, since the number of sections in each state is small.

Alabama.—Code of 1907, Secs. 3394-3395; 3393 (railroad equipment); 7423 (criminal statute).

Alaska.—Rev. Laws of 1913, Secs. 551-555.

Arizona.—Civil Code, Secs. 3278-3281.

Arkansas.—Kirby's Stats. (1904), Secs. 3661-3662 (fraudulent possession statute); 6678-6680 (railroad equipment); 2011 (criminal statute).

California.—Henning's Gen. Laws (1914), Act 3834 (railroad equipment); Penal Code, Sec. 538 (criminal statute).

Colorado.—Mill's Ann. Stats. (1912), Secs. 620-634; 6172-6176 (railroad equipment); 630-633 (criminal statute).

Connecticut.—Gen. Stats. (1902), Secs. 834-835; 4864-4865; 4866-4867 (railroad equipment); 1253 (criminal statute); acts of 1909, p. 937.

Delaware.—Rev. Code of 1915, Secs. 2631-2632, 452 (railroad equipment).

District of Columbia.—Code of 1910, Secs. 546-547; 833a (criminal statute).

Florida.—Compiled Laws of 1914, Secs. 2516; 2845-2846 (railroad equipment); 3356-3357 (criminal statute).

Georgia.—Code of 1911, Secs. 2790-2792 (railroad equipment); 3318-3319, 3259; 722 (criminal statute).

Hawaii.—Rev. Laws of 1915, Sec. 3120.

Idaho.—Rev. Code of 1908, Secs. 2827-2829 (railroad equipment); 7100 (criminal statute).

Illinois.—Jones & Add. Stats. Ann. (1913), Secs. 8799-8800 (railroad equipment).

INDIANA.—Burns' Rev. Stats. of 1914, Secs. 5700-5702; 5526-5530 (railroad equipment).

IOWA.—Code of 1897, Secs. 2051-2053 (railroad equipment); 2905-2906.

KANSAS.—Gen. Stats. of 1909, Secs. 7144-7146 (railroad equipment); 3836 (fraudulent possession statute); 5237; 5239 (criminal statute).

KENTUCKY.—Statutes of 1915, Secs. 2496-2499 (railroad equipment); 1909 (fraudulent possession statute); 1358b (criminal statute).

LOUISIANA.—Marr's Ann. Rev. Stats., 1915, Secs. 6626-6629 (railroad equipment).

MAINE.—Rev. Stats. of 1903, Ch. 113, Sec. 5; Ch. 52, Secs. 95-98; Ch. 117, Sec. 17 (railroad equipment); Ch. 93, Secs. 3-6; Ch. 127, Sec. 1 (criminal statute).

MARYLAND.—Annotated Code, Art. 21, Sec. 91 (railroad equipment); Art. 27, Sec. 184 (criminal statute); Acts of 1916, Chaps. 327, 355.

MASSACHUSETTS.—Rev. Laws of 1902, Ch. 198, Secs. 11-13; Acts of 1912, Ch. 271 (fixtures); Rev. Laws of 1902, Ch. 208, Sec. 73 (criminal statute); Supp. to Rev. Laws, 1902-1908. Chaps. 111-112, Secs. 59-60 (railroad equipment).

MICHIGAN.—Howell's Mich. Stats. (2d Ed.), Secs. 7037-7039 (railroad equipment); 14659 (criminal statute); Pub. Acts of 1915, p. 112, Sec. 1.

MINNESOTA.—Gen. Stats. of 1913, Secs. 6981-6993; 6225-6228 (railroad equipment).

MISSISSIPPI.—Code of 1906, Secs. 2785; 4103-4106 (railroad equipment).

MISSOURI.—Rev. Stats. of 1909, Secs. 2889; 2890; 2861; 3311-3313 (railway equipment); 4570 (criminal statute).

MONTANA.—Revised Codes of Mont., Secs. 5092-5094; 4301-4307 (railway equipment); 8689 (criminal statute).

NEBRASKA.—Rev. Stats. of 1913, Secs. 545-546; 2636-2637; 2638-2639 (railroad equipment); 534-535 (criminal statute).

NEW HAMPSHIRE.—Pub. Stats. of 1901, Ch. 140, Secs. 23-26; Pub. Stats. of 1901, Ch. 25, Secs. 1-3 (railroad equipment); Pub. Stats. Supp., 1901-1913, p. 328; Pub. Stats. of 1901, Ch. 140, Secs. 13-14, 16.

NEW JERSEY.—Comp. Stats. of 1911, Vol. II, p. 1561, Secs. 71-73; Vol. III, p. 4254, Sec. 80 (railway equipment); Comp. Stats. of 1911, p. 1805 (criminal statute).

NEW YORK.—Personal Prop. Law, Secs. 60-67; Penal Law, Sec. 940 (criminal statute).

NORTH CAROLINA.—Revisal of 1905, Secs. 982; 983, 984 (railway equipment); Pub. Laws, 1907, Ch. 150; Pub. Laws, 1913, Ch. 60; Rev. Laws of 1905, Sec. 3425 (criminal statute).

NORTH DAKOTA.—Comp. Laws of 1913; Secs. 6757-6758; 4625-4626 (railway equipment); Penal Code, Sec. 10248 (criminal statute).

OHIO.—Page & Adams Ann. Gen. Codes of 1912, Secs. 8568-8570; 12464; 12475 (criminal statute); 9060-9063 (railroad equipment).

OKLAHOMA.—Rev. Laws of 1910, Secs. 1391-1392 (railway equipment); 6745.

OREGON.—Lord's Oregon Laws, 1910, Secs. 6970-6971 (railroad equipment); 7414-7415 (fixtures); 1956 (criminal statute).

PENNSYLVANIA.—4 Purdon's Digest, 1910, p. 3917, Secs. 264-265 (railroad equipment); Acts of 1915, No. 386, p. 866 (fixtures).

RHODE ISLAND.—Gen. Laws of 1909, p. 738, Secs. 63-64 (railroad equipment).

SOUTH CAROLINA.—Code of 1912, Secs. 3740, 3542; 705-707 (railroad equipment).

SOUTH DAKOTA.—Comp. Laws of 1913, Secs. 1315; 490-491 (railroad equipment); 767 (criminal statute).

TENNESSEE.—Code of 1896, Secs. 3666-3670; 3587-3589 (railroad equipment); Acts of 1903, Ch. 199; Acts of 1911, Ch. 8; Code of 1896, Sec. 3152; Acts of 1899, Ch. 15; Acts of 1899, Ch. 12 (criminal statute).

TEXAS.—Vernon's Sayles' Civ. Stats. of 1914, Arts. 5654-5662; 6841.

UTAH.—Comp. Laws of 1907, Secs. 456x2-456x5 (railroad equipment).

VERMONT.—Pub. Stats. of 1906, Secs. 2663-2673; 5785 (criminal statute); 4389-4391 (railroad statute); 2669-2670 (criminal statute).

VIRGINIA.—Code of 1904, Secs. 2462-2462a; Acts of 1908, Ch. 253; Sec. 3719a (criminal statute).

WASHINGTON.—Rem. & Ball. Ann. Stats., Secs. 3670-3672; 2603 (criminal statute); 8741-8742 (railroad equipment); Laws of 1915, Ch. 95.

WEST VIRGINIA.—Code of 1906, Secs. 3101-3105; 3108.

WISCONSIN.—Stats. of 1913, Secs. 2317, 2317f, 2319b; 1839a (railroad equipment); Laws of 1915, Ch. 604.

WYOMING.—Comp. Stats. of 1910, Secs. 3745-3750; 5856 (criminal statute).

CANADIAN PROVINCES.

ALBERTA.—North-West Terr. Cons. Ordinances, 1905-1907, p. 450; as amended by Alberta Stats. of 1908, Ch. 20.

BRITISH COLUMBIA.—Rev. Stats. of 1911, Ch. 20; p. 2532.

MANITOBA.—Rev Stats. of 1913, Ch. 17.

NEW BRUNSWICK.—Cons. Stats. of 1903, Ch. 143; Acts of 1909, Ch. 31; Acts of 1912, Ch. 30.

NOVA SCOTIA.—Rev. Stats. of 1900, Vol. 2, p. 413; Stats. of 1907, Ch. 42; Stats. of 1908, Ch. 24; Stats. of 1914, p. 59.

ONTARIO.—Rev. Stats. of 1914, Ch. 136.

PRINCE EDWARD ISLAND.—Stats. of 1896, Ch. 6.

SASKATCHEWAN.—Rev. Stats. of 1909, Ch. 145; Stats. of 1910-1911, Sec. 16; Laws of 1915, p. 728.

ENGLAND.—52 & 53 Vic., Ch. 45, Sec. 9 (1889).

TABLE OF CONTENTS OF ACT.

AN ACT TO MAKE UNIFORM THE LAW OF CONDITIONAL SALES.

BE IT ENACTED BY

SECTION 1. [Definitions.] The term "conditional sale," as used in this act, means (1) any contract for the sale of goods under which possession is delivered to the buyer, and the property in the goods is to vest in the buyer at a subsequent time upon the payment of part or all of the price, or upon the performance of any other condition or the happening of any contingency; or (2) any contract for the bailment or leasing of goods by which the bailee or lessee contracts to pay as compensation a sum substantially equivalent to the value of the goods, **and by which it is agreed that the bailee or lessee shall become,*** or shall have the option of becoming, or is obligated to become, the owner of such goods upon full compliance with the terms of the contract.

The term "seller" as used in this act means the person who sells **or leases** the goods covered by the conditional sale, or any legal successor in interest of such person.

The term "buyer" as used in this act means the person who buys **or hires** the goods covered by the conditional sale, or any legal successor in interest of such person.

The term "goods" as used in this act means all chattels personal other than things in action and money, and includes emblements, industrial growing crops, and things attached to or forming a part of land which are agreed to be severed before sale or under the **conditional sale.**

**The term "filing district" as used in this act means the subdivision of the state in which conditional sale contracts, or copies thereof, are by this act required to be filed.**

* The portions printed in bold-face type constitute new matter not in the first draft.

The phrase "performance of the condition," as used in this act, means the occurrence of the event upon which the property in the goods is to vest in the buyer, whether such event is the performance of an act by the buyer or the happening of a contingency.

NOTES TO SECTION 1.

It seems desirable to include sales where title is to pass on *part* payment, since the opportunity for deception of the public exists in such cases, though for a shorter period than when title is retained till full payment. The statutes of Montana, New Brunswick, and Ontario expressly include such contracts. Occasional cases of such reservation of title are to be found. Powell *vs.* Clawson, 38 Pa. Super. Ct. 245.

The statutes of Iowa, Nebraska, New Jersey, New York, Virginia, West Virginia, Wisconsin, and Wyoming define as conditional sales contracts which provide for the passing of the property to the buyer upon the performance of *any condition*, not merely upon the payment of the price. In such cases possession and apparent ownership are rendered deceptive by a reservation of title, and the danger to the public is as great as if the condition had been payment of the price. Instances of reservations of this kind are not uncommon. Forbes *vs.* Taylor, 139 Ala. 286 (third party to pay the price); Van Allen *vs.* Francis, 123 Cal. 474 (execution of mortgage); Tarr *vs.* Stearman, 264 Ill. 110 (rendition of services); Bailey *vs.* Dennis, 135 Mo. App. 93 (execution of note); Clark *vs.* Clement, 75 Vt. 417 (doing of work).

It is well known that some sellers attempt to evade the conditional sale recording acts by calling the contract a "lease" or "hiring agreement" and providing for the payment of "rent." Wherever these "leases" are substantially equivalent to conditional sales, they should be subject to the same restrictions. This equivalency seems to exist when the buyer is bound to pay rent equal to the price or value of the goods and has the option of becoming or is to become the owner of the goods after all the rent is paid. In such a contract "rent" means the purchase price, and possession as "lessee" means the possession of a buyer under an executory contract of sale. That the buyer, in some cases, has the option of becoming the owner and thus a sale is not sure to take place, is of but small importance, for, as a practical matter, the buyer will always be willing to accept ownership when he has paid the price. The instances of a buyer declining to become the owner of goods where he has paid "rent" equivalent to the value of the goods, and electing to return the goods and allow his payments to be considered as actual rent, must be exceedingly infrequent.

The statutes of Alabama, Iowa, Maine, Missouri, Ohio, Washington, Wyoming, and Ontario class as conditional sales leases substantially like those described in section one. In many cases where the "lessee" has absolutely agreed to buy the goods at the rent named the contract has been held one of conditional sale. Warren *vs.* Liddell, 110 Ala. 232; Lundy Furniture Co. *vs.* White, 128 Cal. 170; Coors *vs.* Reagan, 96 Pac. (Colo.) 966; Hine *vs.* Roberts, 48 Conn. 267; Staunton *vs.* Smith, 65 Atl. (Del.) 593; Hays *vs.* Jordan, 85 Ga. 741; Lucas *vs.* Campbell, 88 Ill. 447; Singer Sewing Mach. Co. *vs.* Holcomb, 40 Iowa 33; Campbell *vs.* Atherton, 92 Me. 66; Smith *vs.* Aldrich, 180 Mass. 367; Wickes Bros. *vs.* Hill, 115 Mich. 333; Ger-

rish *vs.* Clark, 64 N. H. 492; Equitable Gen. Prov. Co. *vs.* Eisentrager, 34 Misc. (N. Y.) 179; Kelly Road Roller Co. *vs.* Spyker, 215 Pa. 332; Carpenter *vs.* Scott, 13 R. I. 477; Pringle *vs.* Canfield, 19 S. D. 506; Conan *vs.* Singer Mfg. Co., 92 Tenn. 376; Whitcomb *vs.* Woodworth, 54 Vt. 544; Kidder *vs.* Wittler-Corbin Mach. Co., 38 Wash. 179.

"Leases" have likewise been construed to be conditional sale contracts in numerous cases where the buyer had merely an option to become the owner in return for the rentals paid. Unmack *vs.* Douglass, 75 Conn. 633; Vette *vs.* J. S. Merrill Drug Co., 117 S. W. (Mo.) 666; Lanter *vs.* Isenrath, 72 Atl. (N. J.) 56; Central Union Gas Co. *vs.* Browning, 210 N. Y. 10; Weiss *vs.* Leichter, 113 N. Y. Supp. 999; Hamilton *vs.* Highlands, 144 N. C. 279; Sage *vs.* Sluetz, 23 Ohio St. 1; Herring-Hall-Marvin Co. *vs.* Smith, 43 Ore. 315; *In re* Morris, 156 Fed. 597; Singer Mfg. Co. *vs.* Nash, 70 Vt. 434.

SECTION 2. [Contract to be Filed.] **Except as provided in Section 11,** no provision reserving property in the seller in a conditional sale of goods shall be valid **for more than thirty days from the date of the execution of the contract** against subsequent purchasers, mortgagees or pledgees from the buyer, for value and without notice of the seller's title; or against any creditors of the buyer who levy upon or attach the goods without notice of such title; or against creditors of the buyer who have not levied upon or attached the goods but whose rights accrue subsequent to the conditional sale and who have extended credit to the buyer without notice thereof; unless such contract **is in writing and the original,** or a copy thereof, shall be filed as hereinafter prescribed. **Except as provided in Section 5, it shall not be necessary to the validity of such conditional sale contract, or in order to entitle it to be filed, that such contract be acknowledged or attested.**

NOTES TO SECTION 2.

Statutes requiring the recording or filing of conditional sale contracts now exist in 29 states, namely, Alabama, Arizona, Colorado, Connecticut, Georgia, Florida, Iowa, Kansas, Maine, Minnesota, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Texas, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. In four other states recording statutes partially covering the filing of conditional sales have been passed, namely, in Massachusetts, Michigan, Oregon, and Pennsylvania. In Kentucky these contracts are treated as chattel mortgages and required to be recorded as such. To prevent injury to innocent persons who may rely on the buyer's apparent ownership, it seems desirable to insert this filing requirement in the uniform act. The burden on the seller is slight, and the benefit to the public is great.

The question of difficulty is, in whose favor shall this filing statute operate? Against what persons shall the reservation of title be void in the absence of recording?

As far as subsequent purchasers from the buyer are concerned, the statutes are practically unanimous in protecting them. It seems desirable for the sake of clearness to specify mortgagees and pledgees, even though the general heading of purchasers would doubtless include them.

The statutes of Alabama, Virginia, Washington, West Virginia, New Brunswick, Ontario, and Saskatchewan expressly require that the purchasers to be protected shall have paid "value." This element of value is probably implied in the word "purchaser," but it seems best to express it. There is no equity in protecting donees of the buyer by the recording section. In view of the great variety of definitions of "value," it is deemed wise to leave that question to be determined by the pre-existing local law and not to attempt to make uniform the law by a definition in this act.

It is well established that only purchasers without notice of the conditional nature of the buyer's interest should be protected. Express provisions to that effect are found in the statutes of Kansas, Minnesota, Missouri, Oklahoma, South Carolina, Virginia, West Virginia, New Brunswick, Ontario, and Saskatchewan. See also Anderson *vs.* Adams, 117 Ga. 919; First Nat. Bk. *vs.* Tufts, 53 Kans. 710; VanBuren *vs.* Stubbings, 149 Mich. 206; Barnes *vs.* Rawlings, 74 Mo. App. 531; Kelsey *vs.* Kendall, 48 Vt. 24; Perkins *vs.* Best, 94 Wis. 168.

As to creditors, in a few states, namely, Alabama, Georgia, North Dakota, South Carolina, and Washington, only creditors whose rights accrue subsequent to the conditional sale are protected, but in a great majority of the states the date of the extension of the credit is not important. See the statutes of the various states and Patton *vs.* Phoenix Brick Co., 150 S. W. (Mo.) 1116; Hamilton *vs.* David C. Biggs Co., 179 Fed. 949 (C. C. Ohio); Corbett *vs.* Riddle, 209 Fed. 811 (C. C. A. Va.); Huffard *vs.* Akers, 52 W. Va. 21. In New York creditors are not protected at all by the recording act.

Creditors have been classed in a second way by the courts, namely, as lien creditors and general creditors. In many states there are decisions to the effect that only those creditors who have by judgment, or levy of an execution, or by attachment, secured a lien on the particular goods which were the subject-matter of the conditional sale, are protected. The general creditors of the buyer are not within the protection of the recording act. John Deere Plow Co. *vs.* Anderson, 174 Fed. 815 (C. C. A. Ga.); *In re* Atlanta News Pub. Co., 160 Fed. 519 (D. C. La.); *In re* Hager, 166 Fed. 972 (D. C. Iowa); Big Four Implement Co. *vs.* Wright, 207 Fed. 535 (C. C. A. Kans.); Crucible Steel Co. *vs.* Holt, 174 Fed. 127 (C. C. A. Ky.); Wilson *vs.* Lewis, 63 Neb. 617; Reischmann *vs.* Masker, 69 N. J. L. 353; Mechanics Bank *vs.* Gullett Gin Co., 48 S. W. (Tex.) 627; Malmo *vs.* Shubert, 79 Wash. 534; E. L. Essley Mach. Co. *vs.* Milwaukee Motor Co., 160 Wis. 300. In several states the statutes expressly protect lien creditors only. This is true in Alabama, Montana, Nebraska, New Jersey, Vermont, and Wyoming.

The statute as drafted protects both prior and subsequent creditors who have acquired a lien on the goods by levy or attachment. By such act they have in a certain sense become purchasers of the goods. They have acquired legal property rights in the goods, and, if they have done so innocently, they ought to be protected as against the conditional seller. Their equities are superior to his. General, unsecured creditors, on the other hand, unless they have advanced money or other property on the strength of the buyer's apparent ownership of these particular goods, have no equity as against the

conditional seller. They have acquired no lien upon or property in the goods, and have not taken any step in reliance on the possession and apparent ownership of the buyer.

It is submitted that justice to all deserving creditors will be worked out if only secured or lien creditors and subsequent creditors who have relied on the buyer's apparent ownership are protected.

It is very generally held that creditors, in order to claim the protection of the statute, must have been without notice of the conditional nature of the buyer's rights at the time when their rights were fixed. See the statutes of Alabama, Arizona, Iowa, Nebraska, New Jersey, North Dakota, South Dakota, and Washington. See also Diamond Rubber Co. *vs.* Fourth Nat. Bk., 55 So. (Ala.) 1911; Jones *vs.* Clark, 20 Colo. 353; Reisman *vs.* Wester, 72 S. E. (Ga.) 942; F. P. Gluck Co. *vs.* Therme, 134 N. W. (Iowa) 438; Dyer *vs.* Thorstad, 35 Minn. 534; Norton *vs.* Pilger, 30 Neb. 860; Batchelder *vs.* Sanborn, 66 N. H. 192; *In re* Vandewater & Co., 219 Fed. 627 (D. C. N. J.); McPhail *vs.* Gerry, 55 Vt. 174; Secor *vs.* Close, 145 Pac. (Wash.) 56; Wolf Co. *vs.* Kutch, 147 Wis. 209.

In a majority of the states the contract or a copy may be filed. See the statutes of Arizona, Kansas, Michigan, Minnesota, Missouri, Montana, New York, North Dakota, Ohio, Oklahoma, Texas, Wisconsin, Wyoming, and Saskatchewan. In Alabama, Iowa, and New Jersey the contract itself must be recorded. In Nebraska, New Brunswick, Ontario, and Prince Edward Island the copy alone may be filed. In New Hampshire, Virginia, Washington, and West Virginia only a memorandum of the contract need be filed. To require that the original contract or a copy be filed seems best. Doubtless generally a copy will be filed. It seems useless to restrict the seller to either the original or a copy. The object is to make public the terms of the sale. The exact words of the contract will do that better than any abbreviation or memorandum.

SUPPLEMENTAL NOTE.—The original section has been changed so as to make the contract valid for thirty days without filing. On more mature consideration it was thought unwise to require the seller to file immediately. The seller's office may be far distant from the filing district. He should have a reasonable time to mail his papers and get them filed.

It has seemed wise to insert an express provision to the effect that acknowledgements or attestations are not necessary, in view of the present requirement in a few states that the contract be attested or acknowledged by the buyer.

SECTION 3. [Place of Filing.] The conditional sale contract or copy shall be filed in the office where deeds of real property are recorded in the (city,) county (, or registration district) in which the goods are delivered **for use. This section shall not apply to the contracts described in Section 5.**

NOTES TO SECTION 3.

The filing statutes now in force are of two classes with respect to the place of record required. One requires record in a local office, such as the town clerk's office; the other class makes the county the unit of record. Connecticut, Maine, Massachusetts, Michigan, New Hampshire, New York (with some exceptions), Vermont, and Wis-

consin have the town recording system. The twenty-three other states having recording statutes require record in the county office, where deeds are recorded and all important records with respect to real property are kept.

The county system has seemed the better, since the records in the county office will be kept in much more orderly fashion than in the town offices, and since the convenience of persons desiring to deal with the goods will be served quite as well by a record in the principal town or city of the county as if the record were located in some remote office in the country.

The next question to be decided is, which county shall be made the county of record? There are but two practical choices, namely, the county of the buyer's residence and the county of the delivery of the goods.

Connecticut, Iowa, Maine, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Ohio, South Carolina, South Dakota, Washington, Wisconsin, New Brunswick, Ontario, Prince Edward Island, and Saskatchewan (15 states and 4 Canadian provinces) require record in the district of the *buyer's residence.*

Arizona, Montana, North Dakota, Virginia, West Virginia, and Wyoming (6 states) record in the county where the goods were at the time of sale.

Oklahoma and Kansas (2 states) record where the goods shall be kept after the sale.

In Alabama, Georgia and Michigan a double record is required, one in the district of the buyer's residence and one in the district where the goods were delivered. In Texas the record may be either in the county of the buyer's residence or in the county of delivery.

The desideratum is to have a record in the county where the goods are permanently kept. It is there that innocent purchasers and creditors will be misled by the apparent ownership of the buyer. Record in the county of the buyer's residence is of little importance, unless the goods are kept there. The goods will be kept in most instances in the county where they are delivered. The county of delivery is easily ascertained. There can be no mistake about its identity. Where the buyer resides may be a question of some complexity.

It has seemed that the problem could best be solved by requiring filing in the county of delivery, and following that requirement by provisions respecting removal of the goods from the county of original delivery. Such latter provisions are made in Sections 10 and 11 of the act.

In most cases the goods will be delivered, the buyer will reside and the goods will be kept in one and the same county. Then but one filing will be required. In the instances where the county of the buyer's residence does not coincide with the county of delivery, record at the place of delivery will be more useful. Record at the buyer's residence will be of slight value.

If the goods are moved to a new county after the original delivery, the burden of two filings will be put on the seller, but the safety of the public justifies it. The seller is given 30 days after such removal to file the contract in the new county. This period in which to seek information as to removals, coupled with the penalty upon the buyer for removal without consent of the seller, will reduce to a minimum, it is believed, the danger to the seller and to the public from removals of goods.

In some states there are districts which are not within any county. Thus, Baltimore and St. Louis are, it is understood, not within the

borders of any county. Conditional sale contracts in such cases would have to be filed in a city office and not in a county office. In other cases the unit of record is not the county, as in some cases in Massachusetts where a county is divided into two registration districts, and in Louisiana, where the parish is the unit. These special cases may be provided for by the insertion of the words "city" or "registration district," together with county. In most states the bracketed words "city" and "or registration district" may be omitted. This same question has been met in a similar way in some later sections of the act.

SUPPLEMENTAL NOTE.—The second draft requires filing in the district "in which the goods are delivered *for use*." Frequently the goods are immediately removed from the original place of delivery. It is desirable to require filing in the district where the goods are to remain with some degree of permanence. If goods are shipped from seller to buyer at the buyer's expense, the goods are delivered to the carrier as an agent of the buyer. Yet it would be senseless to require filing at the place of delivery to the carrier.

SECTION 4. [Fixtures.] If, at the time of such sale or thereafter, the goods are so affixed to realty as to become part thereof, the conditional sale shall be void after the goods are so affixed, against owners and against subsequent purchasers or mortgagees of the realty, for value and without notice of the conditional seller's title, unless the conditional sale contract, or a copy thereof, together with a statement signed by the seller briefly describing the realty and stating that the goods are affixed thereto, shall be filed in the office where a deed of the realty would be recorded.

NOTES TO SECTION 4.

In practically all American states a conditional seller who has reserved title to a chattel which is affixed by the vendee to his real property has no rights against a subsequent purchaser or mortgagee of the real property who has no notice of the conditional sale of the chattel. Price *vs.* Case, 10 Conn. 375; J. S. Schofield Sons Co. *vs.* Woodward, 72 S. E. (Ga.) 509; Allis-Chalmers Co. *vs.* City of Atlantic, 144 N. W. (Iowa) 346; Rowand *vs.* Anderson, 33 Kans. 264; Jenks *vs.* Colwell, 66 Mich. 420; Hopewell Mills *vs.* Taunton Sav. Bk., 150 Mass. 519, 521; Tibbotts *vs.* Home, 65 N. H. 242; Brennan *vs.* Whittaker, 15 Ohio St. 446; Washburn *vs.* Inter-Mountain Mining Co., 109 Pac. (Ore.) 382; Union Bank *vs.* Wolf Co., 114 Tenn. 255, 4 Am. & Eng. Ann. Cases 1073; Davenport *vs.* Shants, 43 Vt. 546.

In four states comparatively recently statutes have been enacted declaring that the condition reserving title to fixtures shall be void as against subsequent purchasers or mortgagees of the real property who have no notice of the conditional sale, unless the conditional sale contract is recorded in the office where a deed of the land would be recorded. See the statutes of Massachusetts, New York, Oregon and Pennsylvania.

Section 4 above is modeled after these statutes. It seems desirable to give the conditional seller a chance to protect himself against dealers with the real estate by the making of a record. If this record

is in the same office where deeds of real property are recorded, the labor of searching for conditional sale contracts on the part of the prospective buyer or mortgagee of the land will be slight.

The contract will, under the provisions of Sections 3 and 11, already be filed in the proper office if the seller performs his duty, for the contract will be recorded in the county office where deeds are recorded. Section 4 will place but a slight added burden on the seller where the goods are a fixture, namely, that of filing a statement that the goods are attached to described real property.

SECTION 5. [Railroad Equipment or Rolling Stock.] No conditional sale of railroad or street railway equipment or rolling stock shall be valid as against the purchasers, mortgagees, pledgees and creditors described in Section 2, unless the contract shall be acknowledged by the buyer **or attested** in like manner as a deed of real property, and the contract, or a copy thereof, shall be filed in the office of the Secretary of State; and unless there shall be plainly and conspicuously marked upon each side of any engine or car so sold the name of the seller, followed by the word "owner."

NOTES TO SECTION 5.

Statutes making special provision for the conditional sale of railroad and street railway rolling stock and equipment are now found in 46 states. They are strikingly similar.

*Goods Covered by the Statutes.* The phrase most commonly used to describe the goods covered by these statutes is "railroad and street railway equipment and rolling stock." In a few states interurban equipment and rolling stock are specifically mentioned, and there seems to be no reason why they should not be included. In some states only railroad equipment and rolling stock are mentioned. The slight variations of wording are so numerous that they cannot be detailed here. The words used in Section 5 are supported by a majority of the statutes.

*Acknowledgment Required.* Acknowledgment is required in 40 of the 46 states having these railroad statutes. It seems desirable to give some formality to the contract, in view of the large amounts of money generally involved and the fact that record is required in a state office.

*Persons Protected.* The existing statutes, in most instances, make the reservation of title void as against judgment creditors and purchasers in good faith. It seems desirable to give the protection of the statute, in case of failure to record, to the same persons named in the general filing statute herein, Section 2.

*Place of Record.* In 28 of the states the place of record is made the office of the Secretary of State and in four others record is required in that office and also in a county office. In view of the statewide nature of the business often involved and the importance of the contracts, state registration may be justifiable.

*Marking of Engines and Cars.* In all but four of the 46 states the engines and cars are required to be marked with the name of the seller and a statement indicating his ownership. This provision is continued in Section 5 above.

*Duration of Conditional Sale Contracts of Railroad Equipment.* In 12 states the time during which these contracts can run is limited. In Arizona, Delaware, Minnesota, Montana, North Dakota, South Dakota, and Wisconsin the limit is 10 years; in Mississippi and Tennessee 15 years; in Maryland 20 years, and in Colorado and Kentucky 25 years. A provision requiring the refiling of these contracts at the end of fifteen years has been inserted in Section 8.

SECTION 6. [Conditional Sale of Goods for Resale.] When goods are sold under a conditional sale contract, and the seller expressly or impliedly consents that the buyer may resell them prior to performance of the condition, the condition shall be void against purchasers from the buyer for value in the ordinary course of business, and as to them the buyer shall be deemed the owner of the goods, even though the contract, or a copy thereof, shall be filed according to the provisions of this act.

NOTES TO SECTION 6.

This section attempts to state a rule of law quite widely recognized. Bass *vs.* International Harv. Co., 53 So. (Ala.) 1014; Flint Wagon Works *vs.* Malone, 81 Atl. (Del.) 502; Clarke Bros. *vs.* McNatt, 132 Ga. 610; Trousdale *vs.* Winona Wagon Co., 25 Idaho 131; Barbour *vs.* Perry, 41 Ill. App. 613; Winchester Wagon Works *vs.* Carman, 109 Ind. 31; Rogers *vs.* Whitehouse, 71 Me. 722; Spooner *vs.* Cummings, 151 Mass. 313; Pratt *vs.* Burhans, 84 Mich. 487; Columbus Buggy Co. *vs.* Turley, 73 Miss. 529; Baker *vs.* Tolles, 68 N. H. 73; Fitzgerald *vs.* Fuller, 19 Hun 180; Star Mfg. Co. *vs.* Nordeman, 118 Tenn. 384; Oconto Land Co. *vs.* Wallschlaeger, 155 Wis. 418. Where the seller attempts to reserve the property in himself and at the same time to allow a resale by a retailer in the ordinary course of business, he is doing two inconsistent things. A purchaser from a retailer in the ordinary course of business ought not to be obliged to examine the records to learn whether the retailer has title or whether title has been reserved under a conditional sale contract. That the goods have been put into the retailer's stock with the consent of the wholesaler is conclusive evidence that they are there for sale and that the retailer has title or the right to convey.

The mere constructive notice of the record of the contract ought not to prevail as against a buyer from a retailer in the ordinary course of business. Mortgagees, pledgees and creditors of the retailer are, of course, bound by the provisions of the recording act and will have constructive notice of the conditional sale, but in the case of purchasers in the ordinary course of business, as distinguished from purchasers of the stock in bulk, no notice of the conditional sale should be effectual to bind them.

Public Acts of Michigan, 1915, p. 112, Sec. 1, requires that a contract for the conditional sale of goods to a retailer to be resold by him shall be recorded in order to be valid as against anyone except the seller and buyer. But in Michigan there is no general recording statute.

SECTION 7. [Filing.] The filing officer shall mark upon the contract or copy filed with him the day and hour of filing and

shall file the contract or copy in his office for public inspection. He shall keep a book in which he shall enter the names of the seller and buyer, the date of the contract, the **day and hour** of filing, a brief description of the goods, the price named in the contract and the date of cancellation thereof; **except that in entering the contracts mentioned in Section 5 the Secretary of State shall record either the sum remaining to be paid upon the contract or the price of the goods.** Such book shall be indexed under the names of the seller and of the buyer. For filing **and entering** such contract or copy **the filing** officer shall be entitled to a fee of (ten cents), except that for filing **and entering** a contract described in Section 5 the Secretary of State shall be entitled to a fee of (one dollar).

NOTES TO SECTION 7.

In Minnesota, Montana, Nebraska, New York, Texas, Virginia, Washington, Wisconsin, Wyoming, New Brunswick, Ontario, Prince Edward Island, and Saskatchewan the statutes expressly provide as to the duties of the clerk receiving a conditional sale contract for filing. The provisions are, in the main, like those above indicated. The clerk would, in order to make the record effective, necessarily be obliged to have some such system of recording, but it seems better to require it expressly rather than to leave it to the discretion of the various officers concerned. Uniformity of style of record is of some importance.

The filing fee for ordinary contracts is 50 cents in Montana and Prince Edward Island; 25 cents in Nebraska, Virginia, Washington, Wyoming, and Saskatchewan; 12 cents in New York and Wisconsin, and 10 cents in Minnesota, New Brunswick, and Ontario. It is desirable to encourage sellers to file their contracts, and therefore the fee of 10 cents has been selected. The labor of the clerk will be very slight.

The fee for filing contracts with respect to railroad equipment is found to be $15 in two states, $10 in one state, $5 in seven states, $2 in four states, and $1 in four states. The fee of $1 seems adequate to compensate the Secretary of State.

The amount of the fee has been bracketed to indicate the possibility of local variation upon this point.

SUPPLEMENTAL NOTE.—The exception made in lines 7, 8, 9 and 10 is necessitated by the fact that many car trust equipment contracts do not mention the purchase price but only the balance due on the contract.

SECTION 8. [Refiling.] The filing of conditional sale contracts provided for in Sections 2, 3 and 4 shall be **valid** for a period of three years only. The filing of the contract provided for

by Section 5 shall be valid for a period of **fifteen** years only. The validity of the filing may in each case be extended for successive additional periods of one year **from the date of refiling** by filing **in the proper filing district** a copy of the original contract **within thirty days next preceding** the expiration of each period, with a statement attached signed by the seller, showing that the contract is in force and the amount **remaining to be paid** thereon. Such copy, with statement attached, shall be filed and **entered** in the same manner as a contract or copy filed and **entered** for the first time, and the filing officer shall be entitled to a like fee as upon the original filing.

NOTES TO SECTION 8.

**In only a few jurisdictions are there provisions limiting the duration of the record of conditional sale contracts. In Minnesota the record is good for but six years, in Nebraska for five years, in Saskatchewan for two years, and in New York, Wisconsin and Wyoming for one year only. Notwithstanding the slight acceptance of this principle of refiling, it seems desirable to the draftsman to require a refiling after three years. The ordinary conditional sale contract will be performed or breached before that time. If a contract extends over a period longer than three years, a fresh record should be made at the end of the three years. Searchers should not be obliged to go back for an indefinite period to discover whether the title to a piano is in the possessor of it.**

**As shown in the notes to Section 5, in 12 states the validity of car trust contracts is limited, the periods ranging from 10 to 25 years. A longer time is ordinarily required for the performance of these contracts than for the performance of an ordinary conditional sale contract. It would seem that 15 years, with a provision for refiling at the end of that time, would be sufficient.**

SECTION 9. [Cancellation of Contract.] **After the performance of the condition,** the seller, upon demand by the buyer or any other person having an interest in the goods, shall execute and deliver to him a statement that the condition in such contract is performed and that the buyer has become the owner of the goods. A seller who fails, for thirty days after a written demand, to **mail or** deliver such a statement of satisfaction shall forfeit to the buyer five dollars ($5.00) and be liable for the actual damages suffered. The **filing** officer, upon presentation of such statement of satisfaction, shall file the same and note the cancellation of the contract and the date thereof on the margin of the page where

the contract has been **entered.** For filing and entering the statement of satisfaction the filing officer shall be entitled to a fee of (ten cents), except that the Secretary of State shall be entitled to a fee of (fifty cents) for filing and entering a statement of the satisfaction of a contract described in Section 5.

NOTES TO SECTION 9.

**The procedure upon the cancellation of a conditional sale agreement, due to performance, is expressly provided for in but few states. In Minnesota, New York, Vermont and Virginia, and in New Brunswick and Saskatchewan, provisions similar to those made in Section 9 are set forth in the statutes. Here, as in the case of filing and refiling, it seems desirable to make the record uniform and to prescribe an orderly procedure to be followed in dealing with these contracts. The clerk would in most cases probably, without statutory direction, treat the question of cancellation as above provided, but it is advantageous to make certain such treatment.**

**The fees for the cancellation of the railroad equipment contracts, as set forth in the present statutes, range from three dollars to 50 cents. In the majority of states in which provisions have been found, namely, in 12, the fee is one dollar. The fee of 50 cents seems adequate to compensate the Secretary of State for his labor, and seems in correct proportion to the fee of one dollar for filing the contract.**

SECTION 10. [Prohibition of Removal or Sale **Without Notice.**] **Unless the contract otherwise provides, the buyer under a conditional sale contract may, without the consent of the seller, remove the goods from any filing district and sell, mortgage or otherwise dispose of his interest in the goods**; but, prior to the performance of the condition, no such buyer shall remove the goods from a **filing district** in which the contract or a copy thereof is filed, except for temporary uses **for a period of not more than thirty days**, unless the buyer, before such removal, shall give the seller written notice of the place to which the goods are to be removed **and the approximate time of such intended removal**; nor shall the buyer, prior to the performance of the condition, sell, mortgage or otherwise dispose of his interest in the goods, unless the buyer, or the person to whom he **is about to** sell, mortgage or otherwise dispose of his interest in the goods, shall notify the seller in writing of the name and address of the person to whom his interest in the goods **is about to be** sold, mortgaged or otherwise transferred, **not less than five days before** such

sale, mortgage or disposal. If any buyer does so remove **the goods**, or does so sell, mortgage or dispose of **his interest in** the goods without such notice, the seller may retake possession of the goods and deal with them as in case of default in payment of part or all of the purchase price. The provisions of this section regarding the removal of goods shall not apply, however, to the goods described in Section 5.

NOTES TO SECTION 10.

Unless there is a record of the conditional sale contract in the county in which the goods are located, the public is apt to be defrauded. Innocent buyers and chattel mortgagees will naturally examine only the records of the county in which the goods are located. They are not apt to know where the goods were originally delivered, or where the possessor of them lived, when he bought them. It seems desirable to compel the seller to make a new record of the contract when the goods are moved into a new county, or for the first time brought into the state. In order that it may be reasonable to compel the seller to make this record, every effort must be made to give the seller notice of the removal. He will naturally learn in many cases of such removal, because he will be collecting the part payments and will be looking for the buyer. But if a civil penalty is placed upon removal by the buyer without notice to the seller, the chances of the seller knowing of such removal and being able to file the contract in the new county will be greatly increased. In view of the danger to the seller if the goods are taken into a new county where there is no record, the penalty of allowing the seller to retake the goods as on a default, does not seem too harsh.

In Texas the seller is allowed to retake the goods if the buyer removes them from the county without his consent. In Vermont for the removal of the goods from the state without the seller's consent the buyer may be subjected to a penalty of twice the value of the goods. In Saskatchewan removal from the registration district without 20 days' written notice to the seller is prohibited under penalty of $100 fine.

It seems unreasonable to compel the buyer to get the consent of the seller to a removal to a new county or a new state. Such consent might be withheld unjustly by the seller. If the seller knows of the removal, he can refile the contract. Such refiling is what is desired, not an absolute prohibition against moving the goods about from place to place.

Conditional sale contracts frequently contain provisions prohibiting removal and allowing retaking by the seller on that account, and such provisions have been enforced by the courts. Hall *vs.* Draper, 20 Kans. 137.

The interest of the buyer ought to be assignable before complete payment, but the assignment is of so much importance to the seller that he should receive notice of it as soon as possible. The section requires notice to be given under penalty of allowing the seller to treat the buyer as if in default. If the seller is to look to another than the original buyer for his payments, he should know that fact as soon as possible. If the seller is not obliged to look to that other for the payments, he should know that possession of the goods has passed to another or that another claims some interest in the goods. The

statutes of at least 27 states make a sale by the buyer criminal, in some cases merely where such sale is without the written consent of the seller, and in others where the sub-sale or other transfer is with fraudulent intent.

SECTION 11. [Refiling on Removal.] When, **prior to the performance of the condition,** the goods are removed by the buyer from a **filing district** in this state to another **filing district** in this state in which such contract, or a copy thereof, is not filed, or are removed from another state into a **filing district** in this state where such contract or copy is not filed, the reservation of the property in the seller shall be void as to the purchasers, mortgagees, pledgees and creditors described in Section 2, unless the conditional sale contract, or a copy thereof, shall be filed in the filing district to which the goods are removed, within thirty days **after notice of the filing district to which the goods have been removed.** The provisions of this section shall not apply, however, to the goods described in Section 5. **The provisions of Section 8 regarding the duration of the validity of the filing and the necessity for refiling shall apply to contracts or copies which are filed in a filing district other than that where the goods were originally delivered for use.**

NOTES TO SECTION 11.

As stated previously, the county where the goods are located is the county where it is important to have the record for the purpose of protecting the public. In a few jurisdictions the statutes provide that the seller must refile the contract on a removal of the goods to a new county and on the bringing of the goods into the state for the first time. This refiling is not required to be immediate. In Alabama the refiling must be within 30 days after the removal, in Georgia within six months, in Mississippi within 12 months, in Texas within four months, in West Virginia within three months, and in Saskatchewan within 60 days. It might be unreasonable to require the seller to make a new record at once. He should be given time to learn of the removal and to prepare and send his papers for record. Most sellers collect part payments frequently and will thus learn of the removal. The provisions of Sections 10 and 12 will assist in bringing the removal to the seller's attention. The thirty-day period within which the notice must be filed seems not too strict a requirement.

A large number of cases have arisen in which the principal question was as to the law which controlled where goods were removed from one state to another. It seems to be settled that if the goods are sold in state A for the purpose of being removed to state B, the law of state B will control regarding the recording of the conditional sale contract. Summers *vs.* Carbondale Mach. Co., 173 S. W. (Ark.)

194; Beggs *vs.* Bartels, 73 Conn. 132; David Bradley & Co. *vs.* Kingman Implement Co., 112 N. W. (Neb.) 346; Lanston Monotype Mach. Co. *vs.* Curtis, 224 Fed. 403; Potter Mfg. Co. *vs.* Arthur, 220 Fed. 843; *In re* Gray, 170 Fed. 638. But if the goods are sold under a conditional sale contract in state A and delivered in state A, and after some use they are removed to state B, there is a great conflict of opinion. In the following cases the law of state A, the state where the contract was made, controlled as to the conflicting rights of the seller and claimants under the buyer: Fuller *vs.* Webster, 95 Atl. (Del.) 335; Harper *vs.* People, 2 Colo. App. 177; Waters *vs.* Cox, 2 Bradw. (Ill.) 129; Baldwin *vs.* Hill, 4 Kans. App. 168; Gross *vs.* Jordan, 83 Me. 380; Davis *vs.* Osgood, 69 N. H. 427; Warnken *vs.* Chisholm, 8 N. D. 243; Studebaker Bros. Co. *vs.* Mau, 13 Wyo. 358. In the following cases the law of state B, the state to which the goods were removed, controlled as to the formalities necessary to protect the seller's rights under the conditional sale contract: Corbett *vs.* Riddle, 209 Fed. 811; Public Parks Amus. Co. *vs.* Embree-McLean Co., 64 Ark. 29; Weinstein *vs.* Freyer, 93 Ala. 257; North *vs.* Goebel, 138 Ga. 739; Marvin Safe Co. *vs.* Norton, 48 N. J. L. 410; Emerson Co. *vs.* Proctor, 97 Me. 360; National Cash Register Co. *vs.* Paulson, 16 Okla. 204; Sanger *vs.* Jesse French Co., 21 Tex. Civ. App. 523.

If a uniform law with respect to conditional sales were adopted, and this law provided for the refiling of the contract upon removal of the goods, the difficulties illustrated by these cases would be avoided. A slight extra burden would be placed upon the seller in refiling the contract, but much litigation and loss on the part of the innocent public would be prevented. It is believed that the seller will, in most cases under this act, know of the removal of the goods out of the county or out of the state. If he does not refile his contract for the protection of the public in the new jurisdiction, he should be the loser and not innocent buyers, mortgagees or creditors.

SUPPLEMENTAL NOTE.—In the second draft the seller is given thirty days after he receives notice of the removal within which to refile the contract in the new county. If the buyer performs his duty, the seller will know of the removal. If he does know of it, it is fair to require a refiling for the protection of the public.

SECTION 12. [Fraudulent Injury, Concealment, Removal or Sale.] Every buyer of goods under a conditional sale who, **maliciously or** with intent to defraud, prior to the performance of the condition shall injure, destroy or conceal the goods, or remove them to a **filing district** where the contract, or a copy thereof, is not filed, or shall sell, mortgage or otherwise dispose of such goods **under claim of full ownership,** shall be guilty of a crime and, upon conviction thereof, shall be imprisoned in the county jail for not more than one year or be fined not more than **($500)** or both.

NOTES TO SECTION 12.

Provisions of this sort imposing a criminal penalty for acts done with a fraudulent intent and calculated to destroy the seller's security are very common. It seems desirable to insert such a section for

the prevention of fraud upon the seller, and also fraud upon the innocent public in some cases.

In Kansas, Missouri, Nevada, New Jersey, Ohio, Oregon, and Washington the statute makes fraudulent destruction of the goods a crime.

In Kansas, Missouri, Oregon, South Dakota, and Washington fraudulent injury of the goods is a crime.

In Connecticut, District of Columbia, Idaho, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Missouri, Nevada, New Hampshire, New Jersey, New York, North Dakota, Ohio, Oregon, South Dakota, Tennessee, and Washington fraudulent concealment of the goods is covered by the criminal statute.

In Arkansas, California, Connecticut, District of Columbia, Florida, Idaho, Maryland, Michigan, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, North Dakota, Ohio, Oregon, South Dakota, Virginia, Washington, and Wyoming the statutes make fraudulent removal a crime.

In Alabama, Arkansas, California, Colorado, Connecticut, District of Columbia, Florida, Georgia, Idaho, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Ohio, South Dakota, Tennessee, Vermont, Virginia, Washington, and Wyoming the fraudulent sale or other disposal of the goods is a crime.

The fines imposed vary from $1000 as a maximum in Nebraska, Nevada, New Hampshire, and North Dakota to $5.00 as a minimum in Virginia. The periods of imprisonment to which the criminal may be sentenced vary from 10 years as a maximum in Nebraska to 15 days as a minimum in Kentucky and Virginia. The one year period of imprisonment seems reasonable as a maximum and it seems desirable to make the possible fine depend upon the value of the goods.

Some of these criminal statutes apply specifically only to conditional sales, others to conditional sales and chattel mortgages, and still others by their express wording might seem to be confined to cases of chattel mortgages. The latter class are inserted here, since the offense in the case of fraud on the part of a chattel mortgagee is essentially similar, and doubtless in many cases the statutes have been held to apply to conditional sales by implication.

SUPPLEMENTAL NOTE.—Note the insertion in lines 2 and 3 of the word "maliciously" to provide for cases of the wanton destruction of goods to prevent their retaking. Such destruction is said to be fairly frequent.

SECTION 13. [Retaking Possession.] Whenever the buyer under a conditional sale shall be in defanlt in the payment of any sum due under the contract, or in the performance of any other condition which the contract requires him to perform in order to obtain the property in the goods, **or in the performance of any promise, the breach of which is by the contract expressly made a ground for the retaking of the goods,** the seller may retake possession thereof. **Unless the goods can be retaken without breach of the peace, they shall be retaken by legal process.**

NOTES TO SECTION 13.

This right on the part of the seller is an elementary one. It is generally reserved in the contract, but it is deemed wise to make it a statutory right, rather than a right to be contracted for. This right is restricted and limited by the following sections, which prescribe what the seller must do after resuming possession.

It is deemed unnecessary to insert a statement that the seller may resume possession without process, if he can do so without breach of the peace; but that he must resort to legal process if he cannot obtain the goods without breach of the peace.

SUPPLEMENTAL NOTE.—On further consideration the committee deemed it wise to insert the sentence in lines 8 and 9.

SECTION 14. [Notice of Intention to Retake.] The seller may, not more than forty nor less than twenty days prior to such retaking, serve upon the buyer personally or by registered mail a notice of intention to retake the goods on account of the buyer's default. Such notice shall state the sum due under the contract and the time of intended retaking, and shall briefly and clearly state what the buyer's rights under this act will be in case the goods are retaken. If such notice is so served and the buyer does not perform his obligations under the contract before the day set for retaking, the seller may retake the goods and hold them subject to the provisions of Sections 16, 17, 18, 19 and 20 regarding resale, but without any right on the part of the buyer to redeem the goods.

NOTES TO SECTION 14.

This section was not in the original draft. It is inserted between old Sections 13 and 14. Its object is to enable the seller to avoid unnecessary expense and trouble. Often the seller would, without this section, have to make one trip to the buyer's town to retake the goods, then store the goods at considerable expense during the redemption period, and lastly make a second trip to the buyer's town to resell the goods. If the buyer has from twenty to forty days' notice that he must pay up or lose the goods, his rights are as well protected as if he had a ten days' period of redemption after the goods have been retaken. The object is to give the buyer a reasonable time to raise the back payments. Either a notice of intention to retake or a period of redemption after retaking will give the buyer protection. If the former enables the seller to avoid useless trouble and expense, the seller should have the option of taking either method.

SECTION 15. [Redemption.] If the seller does not give the notice of intention to retake described in Section 14, he shall retain the goods for ten days after the retaking within the state in

which they were located at the time of the retaking, during which time the buyer, upon payment or tender of the amount due under the contract at the time of retaking and interest, **or upon performance or tender of performance of such other condition as may be named in the contract as precedent to the passage of the property in the goods, or upon performance or tender of performance of any other promise for the breach of which the goods were retaken,** and upon payment of the expenses of retaking, keeping and storage, may redeem the goods and become entitled to take possession of them and to continue in the performance of the contract as if no default had occurred. Upon **written** demand by the buyer, the seller shall furnish to the buyer a written statement of the sum due under the contract and the expenses of retaking, keeping and storage. For failure to furnish such statement within a reasonable time after demand, the seller shall forfeit to the buyer ($10), and also be liable to him for damages actually suffered because of such failure. **If the goods are perishable so that retention for ten days as herein prescribed would result in their destruction or substantial injury, the provisions of this section shall not apply, and the seller may resell the goods immediately upon their retaking. The provision of this section requiring the retention of the goods within the state during the period allowed for redemption shall not apply to the goods described in Section 5.**

NOTES TO SECTION 15.

The idea of the draftsman in preparing the following sections has been that a conditional sale is practically equivalent to a chattel mortgage, and that the rights of buyer and seller in the conditional sale ought to coincide with those of chattel mortgagor and mortgagee as nearly as possible. Hence the buyer is given the right of redemption after default. It seems but little hardship on the seller to compel him to retain the goods within reach of the buyer for 30 days and allow the buyer to redeem the goods, if he can raise the money. In 30 days there should be opportunity to borrow the money, or to obtain it through the receipt of a monthly salary or wage. It is essential that the buyer should be able to discover just how much is claimed to be due on the contract and as a result of the retaking. The seller should furnish a written statement of this. The fixing of a small penalty for failure to deliver such a statement may stimulate promptness on the part of the seller.

In Maine, Massachusetts, Nebraska, New York, Pennsylvania, Vermont, Wisconsin, New Brunswick, Ontario, Prince Edward Island, and Saskatchewan the statutes expressly provide for redemption by the buyer, the period of redemption varying from 15 days to 40 days. In some states in the absence of statute the courts have allowed the buyer the right of redemption. Miller *vs.* Steen, 30 Cal. 407; Liver *vs.* Mills, 101 Pac. (Cal.) 299; Puffer *vs.* Lucas, 112 N. C. 377.

SUPPLEMENTAL NOTE.—This was Section 14 of the first draft. The seller is required to keep the goods within the state only during the period of redemption. Retention within the buyer's filing district is more expensive than retention at the seller's warehouse or store. Unnecessary storage charges can be avoided by allowing the seller to take the goods to his own store or warehouse within the state, and the buyer will have equal opportunity to redeem.

SECTION 16. [**Compulsory** Resale by Seller.] If the buyer does not redeem the goods within **ten** days after the seller has retaken possession, **and the buyer has paid fifty per cent or more of the purchase price at the time of the retaking,** the seller shall sell them at public **auction in the state** where they were at the time of the retaking, such sale to be held not more than **thirty** days after the retaking. The seller shall give to the buyer not less than ten days' written notice of the **sale, either personally or by registered mail in a post-paid envelope directed to the buyer at his last known place of residence.** The seller shall also give notice of the sale by at least three notices posted **in different public places** within the **filing district where the goods are to be sold,** at least five days before the sale. **If at the time of the retaking $500 or more had been paid on the purchase price, the seller shall also give notice of the sale at least five days before the sale by publication in a newspaper printed within the filing district where the goods are to be sold. The seller may bid for the goods at the resale. If the goods are of the kind described in Section 5, they may be sold at any place, within the time, in the manner and upon the notice prescribed in this section.**

NOTES TO SECTION 16.

In many states the buyer, upon default, forfeits the part payments already made, if the seller retakes the goods. Bray *vs.* Lowery, 163 Cal. 256; Herbert *vs.* Rhodes-Burford Furniture Co., 106 Ill. App. 583; Fleck *vs.* Warner, 25 Kans. 492; Lorain Steel Co. *vs.* Norfolk, 187 Mass. 500; Thirlby *vs.* Rainbow, 93 Mich. 164; C. W. Raymond Co. *vs.* Kahn, 124 Minn. 426; Duke *vs.* Shackleford, 53 Miss. 552; Richards *vs.* Hellen, 133 N. W. (Iowa) 393; Stearns *vs.* Drake, 24 R. I. 272.

But in several of these cases the holding was merely that the seller need not return the part payments before bringing replevin for the goods, and the court hinted that the buyer might later recover his part payments, less a reasonable reduction for the use of and damage to the goods. In other cases it has been held that the buyer is entitled to have his part payments, less rent and damage charges, returned to him when the buyer retakes the goods. Hill *vs.* Townsend, 69 Ala. 286; Commercial Puby. Co. *vs.* Campbell Printing-Press Co., 111 Ga. 388; Quality Clothes Shop *vs.* Keeney, 106 N. E. (Ind.) 541; Shafer *vs.* Russell, 28 Utah 444. The tendency of the courts is to avoid the old hard and fast rule that the buyer forfeited his part payments on default. The courts recognize the equity of the buyer in the goods on account of his part payments. In some states they have had to resort to indirect methods of giving the buyer the benefit of this equity. In other states they have felt bound by the old strict rule of forfeiture. It seems desirable to do away with this doubt and indirection and to admit clearly the right of the buyer to have the benefit of his part payments after default.

In a few states statutory schemes for relieving the buyer of the hardship of forfeiture have been provided. These may be divided into three classes. There are first the states which provide that the seller may not retake the goods for default, unless he returns to the buyer the part payments, less a reasonable amount for the use of the property and damage to it. Such systems prevail in Missouri and Ohio. In Missouri the right to the return of part payments on retaking exists in all cases. In Ohio only when the buyer has paid an amount in excess of twenty-five per cent of the purchase price must the seller return part payments on retaking. This scheme is open to the objection that it is difficult to determine what the value of the use of the goods has been and whether they have been damaged or not. The seller is apt to impose on the buyer and retain too much of the part payments under a claim of rent and alleged damage to the goods.

In Massachusetts and Pennsylvania the right to have a resale is optional with the buyer. In Massachusetts, where seventy-five per cent or more of the price has been paid, the buyer may demand a resale, and will be entitled to the surplus in the hands of the seller after the payment of the full price and expenses. This statute applies only to furniture and other household effects. In Pennsylvania the statute respecting the conditional sale of chattels to be attached to real property provides that the buyer may, within 10 days after the retaking, demand a resale of the property and shall be entitled to any surplus in the hands of the seller after the satisfaction of the price and expenses. In Vermont the seller may resell the goods, and if he does so, the buyer shall be entitled to the surplus thus created. The option in Vermont is with the seller.

In a third class of states resale is compulsory. These states are New York and Tennessee. In these states the seller is obliged, after retaking the goods, to resell them and return to the buyer the excess in his hands after the payment of the price and the expenses of resale. This compulsory resale insures the return of all part payments equitably due him. If he has contracted for goods at a price of $100 and has paid $75 at the time of default and retaking, and the goods on the compulsory resale bring but $25, the buyer is entitled to no return of part payments. The use he has had of the property has evidently been worth $75, for the goods have become so worn and damaged that they will bring only $25. But if, in the case supposed, the goods bring $50 on the resale, it is evident that the buyer ought to have returned to him $25, less the expenses of resale. If such return is not

made, the seller will have received $25 unjustly and the buyer will have been mulcted in that amount because of his default.

This latter system, namely, that of compulsory resale, is the one adopted in the proposed statute. It is believed to be better than the optional resale plan adopted in Massachusetts and Pennsylvania, because it works automatically. Many buyers of goods on conditional sale contracts are men of small means, little versed in the law and unfamiliar with correct business methods. They will not, it is believed, be apt to take advantage of an optional resale provision. They will not ordinarily know of it. It may be said that, if they are careless with respect to their own rights, they do not deserve protection. But the answer is that they frequently will not know what their own rights are, that they are a class of buyers who are frequently very needy and ignorant.

In New York the resale must take place within 60 days after the retaking of the goods. This seems a needlessly long period. It is believed that, if the buyer does not redeem the goods, the seller should be allowed to dispose of the matter by resale as soon as he can do so with due regard to a protection of the buyer's rights. Fifteen days after the period of redemption has expired seems long enough in which to advertise the resale. In Tennessee the seller must advertise the property for resale within 10 days after the retaking.

The length of notice of the resale which the seller must give varies in the different states. In Massachusetts the requirement is three days' newspaper notice; in New York 15 days' notice to the buyer is required; in North Carolina 10 days' notice to the buyer and 20 days' public notice by posting; in Tennessee 10 days' notice to the public by three posted notices; in Vermont 10 days' notice to the buyer and 10 day's notice to the public by two posted notices.

The notices required by the proposed Section 15 are believed to be reasonable and to give the buyer and the public sufficient time to prepare to attend the sale ready to bid, if they desire to do so.

In New Brunswick, Ontario, and Prince Edward Island five days' personal notice to the buyer or seven days' written notice is required. In Saskatchewan the buyer is entitled to eight days' personal notice of the resale or 10 days' written notice. The resale in these Canadian provinces is optional with the seller and not for the purpose of awarding the buyer the surplus after the payment of the price and expenses.

SUPPLEMENTAL NOTE.—This was Section 15 in the first draft. A compulsory resale is now provided for only where the buyer has paid a considerable portion of the purchase price, namely, fifty per cent. If he has paid less, statistics show that nothing is realized for the buyer on a resale. The depreciation of the goods more than eats up the buyer's equity. Where there is no chance of benefiting the buyer, a compulsory resale is a useless and expensive formality. If the buyer wants a resale for the purpose of estimating his equity, the buyer may demand it, even though he has paid only ten per cent of the price. But it seems undesirable to require such resale as a matter of law in cases where business experience shows that it can do no good.

SECTION 17. [Resale at Option of Buyer.] If the buyer has not paid at least fifty per cent of the purchase price at the time of the retaking, the seller shall not be under a duty to resell the

goods as prescribed in Section 16, unless the buyer serves upon the seller, within ten days after the retaking, a written notice demanding a resale. If such notice is served, the resale must take place within thirty days after the service of such notice, in the manner, at the place and upon the notice prescribed in Section 16.

NOTES TO SECTION 17.

This section was not in the original draft. It is inserted between old Section 15 and new Section 18.

As explained in the notes to Section 16, a resale where less than fifty per cent of the price has been paid has been shown to be a useless, expensive formality, not productive of any good to buyer or seller. Nevertheless, if the buyer desires to have a resale when he has paid less than fifty per cent of the price, he ought to have the right to demand a resale. This section gives him such right but does not make the resale compulsory where less than fifty per cent has been paid.

SECTION 18. [Disposition of Goods Where there is no Resale.] If the buyer has not paid at least fifty per cent of the purchase price at the time of the retaking, and does not demand a resale of the goods according to the provisions of Section 17, the seller may retain the goods as his own property, subject only to an obligation to account to the buyer for the surplus, if any, left after adding to the part payments made the value of the goods at the time of the retaking and subtracting therefrom the balance due upon the purchase price, with interest, plus the expenses of retaking.

NOTES TO SECTION 18.

This section was not in the original draft. It was made necessary by Sections 16 and 17. Its purpose is to give the buyer the benefit of the value of the goods retaken, even if there is no resale.

SECTION 19. [Proceeds of Resale.] The proceeds of the resale shall be applied, first, to the payment of the expenses thereof, secondly, to the payment of the expenses of retaking, keeping and storing the goods, and thirdly, to the satisfaction of the balance due on the purchase price. Any sum remaining, after the satisfaction of such claims, shall be paid to the buyer.

NOTES TO SECTION 19.

The provisions of this section are supported by the statutes of Massachusetts, New York, Pennsylvania, Tennessee and Vermont, the only statutes in which resale as a means of estimating the amount to be returned to the buyer is recognized. That the buyer should have the surplus, which represents his equity in the goods, is in accord with the chattel mortgage theory of the conditional sale.

SUPPLEMENTAL NOTE.—This was Section 16 in the first draft.

SECTION 20. [Deficiency on Resale.] If the proceeds of the resale are not sufficient to defray the expenses thereof, and also the expenses of retaking, keeping and storing the goods and the balance due upon the purchase price, the seller may recover the deficiency from the buyer, **or from anyone who has succeeded to the obligations of the buyer.**

NOTES TO SECTION 20.

This section follows out the mortgage theory. The chattel mortgagee can, of course, recover any deficiency after foreclosing his mortgage. The result produced by this section has been reached in a number of cases. Matteson *vs.* Equitable Min. & Mill Co., 143 Cal. 436; Kinney *vs.* Avery & Co., 80 S. E. (Ga.) 663; Christie *vs.* Scott, 94 Pac. (Kans.) 214; Dederick *vs.* Wolfe, 68 Miss. 500; McCormick Mach. Co. *vs.* Koch, 8 Okla. 374; Ascue *vs.* C. Aultman & Co., 2 Willson (Tex.), Sec. 947. While an action for the entire price due has often been considered inconsistent with a retaking of the goods, a retaking of the goods ought not to be considered as an election to trust to the goods alone for the recovery of the price. The retaking constitutes an election to look to the security given by the buyer for the payment of the price. After resort to that primary source of payment the seller ought to be allowed to proceed to the secondary source, the promise of the buyer to pay. If the buyer is given a right to recover the surplus on the resale, the seller must be allowed to recover his full purchase price.

SUPPLEMENTARY NOTE.—This was Section 17 of the first draft. In view of the criticism of this section by some of the Commissioners upon the first reading of the act, it seems wise to add a full statement of the condition of the law on the subject and the reasons for including Section 20 in the act.

*The Authorities.*—It is submitted that the objection to this section from the point of view of authority is based on a misconception. Many cases, it is true, have held that the conditional seller cannot, after retaking the goods, recover any part of the price from the buyer. See notes to Section 22. But these cases were decided under a theory of conditional sales entirely different from that proposed in the act. The theory under which these cases were decided was that the retaking was a rescission of the contract, that all obligations under the contract were discharged by such act of retaking, that the consideration for the buyer's promise to pay the purchase price had failed. The seller, under this theory, kept the goods as his own. He had no duty to resell the goods for the benefit of the buyer.

On the other hand, under the proposed act the theory of retaking is wholly different. It is not a theory of rescinding the contract, but of foreclosing a mortgage. The right to retake is a right to

enforce a security which the seller reserved to compel the performance of the promise to pay the purchase price. The result of the retaking is not, as it was at common law or under the old statutes, to leave the seller in possession and ownership of the goods. The seller must, under the act, after retaking the goods, resell them, as a chattel mortgagee would foreclose a mortgage. The ultimate result of retaking under the act is that the seller loses the goods, and is left with the resale price and the part payments of the original buyer in his hands. It is elementary justice that the seller, who has parted with his goods, should have the contract price of them. If the resale price plus the part payments previously made does not equal the contract price, the buyer should pay the deficiency.

The fallacy in arguing that by the weight of common law authority there is no right to recover a deficiency judgment, and that there ought, therefore, to be no right to a deficiency judgment under the act, is that at common law the seller ended up after the retaking with the goods in his possession and absolutely his property. Of course, he cannot have both the goods and the price. But under the proposed act the seller loses the goods by a compulsory resale and has in his possession only the resale price and the previously made part payments.

The only decisions under the common law and the old statutes which ought to be of weight with the Conference on this subject are those where the chattel mortgage theory of a conditional sale was applied. Examples of these cases are cited in the original notes to this section. They all sustain the provisions of the proposed act. So also do the provisions of the two statutes which now provide for a compulsory resale after retaking, namely, the statutes of New York and Tennessee. N. Y. Pers. Prop. Law, Sec. 67; Code of Tenn., Sec. 3668.

The holding in the cases relied upon by the opponents of this section can properly be summarized as follows: "A conditional seller who retakes the goods *and retains them as his own* may not thereafter recover the purchase price from the buyer." The proposed provision of the act is not, as some opponents of this section would have suggested, the opposite of this holding. It is, on the other hand, properly condensed as follows: "A conditional seller who retakes the goods *and resells them and applies the resale price on the purchase price* may recover from the buyer any balance still due."

No attempt is being made in Section 20 to work a revolution in the existing law or to go against the great weight of authority in the United States. On the other hand, Section 20 states the existing law as it has been adjudicated in all cases where the exact question involved has arisen. Where the chattel mortgage theory of the conditional sale has been adopted, the deficiency judgment has followed as a matter of course. And the chattel mortgage theory of the conditional sale is increasingly receiving the approval of the courts, of legislatures and of legal writers.

*Practical Operation of the Section.*—The justice of Section 20 can best be determined by putting a concrete case, and observing how the act would work. Let us suppose the following facts: On Jan. 1, 1917, a piano is delivered under a conditional sale contract; price $400; terms $50 down and $10 a month until full price is paid; buyer pays $50 on delivery and $10 on Feb. 1 and $10 on March 1; buyer defaults in $10 payment due April 1; piano is retaken by seller on April 11; resale occurs under the act, after due advertisement, on May 23; on resale piano brings $300; costs of resale are $10. The result of the transaction is that the seller has parted with a $400 piano and now has in his hands $370, namely, $70 part payments from the buyer and

$300 as the resale price; the seller has also incurred $10 expense on account of the resale. The buyer has had 3½ months use of the piano and has paid $70. Under the act the account would be reckoned as follows:

| | |
|---|---|
| The buyer is charged with $400 plus $10 ..... | $410 |
| The buyer is credited with $70 plus $300 ..... | 370 |
| The buyer is liable for the deficiency, namely..... | 40 |

This result is fair from the point of view of the seller because he has parted with a $400 piano and should receive its value. The buyer has no justifiable complaint because the difference between the original and the resale price of the piano represents the value of the use of the piano which the buyer has had for 3½ months, that is, the rent and the wear and tear on the piano. The deficiency judgment shows that the piano has deteriorated in value due to the buyer's use, to an amount greater than the part payments made by the buyer.

If a deficiency judgment were not allowed in the case supposed, the seller would have parted with a $400 piano and have received only $370 and would have no further remedy. This would not be equitable. The buyer would have had $100 worth of use of the piano and would have been liable for $70 only. This also is unfair. No account has been taken of the resale expense, for which the buyer obviously should respond, since his own breach of contract caused such expense.

SECTION 21. [Action for Price.] The seller may sue for the whole or any installment of the purchase price as the same shall become due under the conditional sale.

NOTES TO SECTION 21.

This section is elementary, but is inserted for the sake of a complete enumeration of the rights of the seller against the buyer. The seller's only remedies are an action for the price or the retaking of the goods or both. Of course, no attempt is made to state the rights of the seller against third persons, as, for example, the right to maintain trover or replevin. Such rights are the same as those of any other owner of personal property.

SUPPLEMENTAL NOTE.—This was Section 18 of the first draft.

SECTION 22. [Election of Remedies.] The retaking of possession, as provided in Section 13, shall be deemed an election by the seller to rescind the conditional sale, and the buyer shall not be liable thereafter for the price except as provided in Section 20. **Neither** the bringing of an action by the seller for the recovery of the whole or any **part** of the price, **nor the recovery of judgment in such action, nor the collection of a portion of the price,** shall be deemed inconsistent with a later retaking of the goods as provided in Section 13. **But such right of retaking shall not be exercised by the seller after he has collected the**

entire price, or after he has claimed a lien upon the goods, or attached them, or levied upon them as the goods of the buyer.

NOTES TO SECTION 22.

It is generally agreed that the retaking of the goods by the seller constitutes an election which prevents him from later suing for the purchase price. Nashville Lumber Co. *vs.* Robinson, 121 S. W. (Ark.) 350; Muncy *vs.* Brain, 110 Pac. (Cal.) 945; Manson *vs.* Dayton, 153 Fed. 258; Turk *vs.* Carnahan, 25 Ind. App. 125; Perkins *vs.* Grobben, 116 Mich. 172; A. F. Chase & Co. *vs.* Kelly, 146 N. W. (Minn.) 1113; Madison Live Stock Co. *vs.* Osler, 39 Mont. 244; Nelson *vs.* Gibson, 143 App. Div. (N. Y.) 894; Kelley Co. *vs.* Schlimme, 220 Pa. 413; Stewart & Holmes Drug Co. *vs.* Ross, 74 Wash. 401. This seems correct, because the act of retaking amounts in practically all cases to a rescission of the contract. The buyer ought not thereafter to be liable for the price, unless the security which he has given for the payment of the price, the goods themselves, proves insufficient to compensate the seller. In Section 17 the seller is allowed to recover the deficiency after a resale. If he retakes the property, he is deemed to have elected to look to the goods as his primary security. If that should fail, he may have the secondary remedy of recovering the deficiency from the buyer. But a concurrent suit for the entire price does not seem justifiable. There are a few instances in which the retaking of goods has been held not to amount to a rescission of the contract, but merely to constitute a taking of the goods as agent for the buyer and for the better security of the seller. These cases are very rare and their correctness questionable. The practical construction put upon a retaking by the parties is that the contract is thereafter off.

It seems obvious that action for a single installment of the price, not the final installment, does not amount to an election to treat the buyer as the owner of the goods. The buyer is not, according to the most essential term of the contract, to become the owner until he has paid the price. The recovery of a single installment is perfectly consistent with the payment of the further installments by the buyer and the complete performance of the contract. The recovery of such installments ought not, therefore, to preclude the seller from retaking the goods later, in case of default. Haynes *vs.* Temple, 198 Mass. 372.

Upon the question of the effect of bringing an action for the entire balance of the price due, the authorities are not harmonious. The prevailing view is that the commencement of an action for the entire price prevents a retaking of the goods at a later time. Butler *vs.* Dodson & Son, 78 Ark. 569; Waltz *vs.* Silveira, 25 Cal. App. 717; North Robinson Dean Co. *vs.* Strong, 25 Idaho 721; Smith *vs.* Barber, 153 Ind. 322; Richards *vs.* Schreiber, 98 Iowa 422; Bailey *vs.* Hervey, 135 Mass. 172; Alden *vs.* Dyer, 92 Minn. 134; Frederickson *vs.* Schmittroth, 112 N. W. (Neb.) 564; Orcutt *vs.* Rickenbrodt, 42 App. Div. (N. Y.) 238; Dowagiac Mfg. Co. *vs.* Mahon, 13 N. D. 516; Sioux Falls Adjustment Co. *vs.* Aikens, 142 N. W. (S. D.) 651; Winton Motor Carriage Co. *vs.* Broadway Automobile Co., 118 Pac. (Wash.) 817. The contrary view has been maintained in E. E. Forbes Piano Co. *vs.* Wilson, 144 Ala. 586; Jones *vs.* Snider, 99 Ga. 276; Foster *vs.* Briggs Co., 98 S. W. (Ind. Terr.) 120; Westinghouse Co. *vs.* Auburn Co., 76 Atl. (Me.) 897; Campbell Mfg. Co. *vs.* Rockaway Pub. Co., 56 N. J. L. 676. The latter view is adopted in the proposed uniform act. In

support of the former view it may be said that the only theory on which the seller can demand the full price is that the buyer has become the owner of the goods. That is the express stipulation of the contract, that passage of property and payment of the price are to be concurrent. When the seller, by bringing an action for the price, affirms that the price is due, he must accept the logical consequent, namely, that the goods belong to the buyer.

But the minority view and the one adopted in Section 22 seem more reasonable and in accord with the chattel mortgage theory of a conditional sale. If an action for the price bars a later retaking of the goods, the seller will never dare to sue for the price and run the risk of getting a worthless judgment and losing his claim upon the goods. Just as an action for the chattel mortgage debt does not bar the foreclosure of the chattel mortgage at a later time, so an action for the purchase price under a conditional sale should not bar a later reliance on the reservation of the property in the goods as security.

SUPPLEMENTAL NOTE.—Section 19 of the first draft. This section has been somewhat expanded to provide for all possible questionable cases.

SECTION 23. [Recovery of Part Payments.] If the seller fails to comply with the provisions of Sections **15, 16, 17, 18 and 19** after retaking the goods, the buyer may recover from the seller all payments which have been made under the contract, with interest.

NOTES TO SECTION 23.

In the two states which have a compulsory resale provision, namely, New York and Tennessee, the penalty for failure to carry out the resale provisions according to law is that the buyer may recover his part payments. Some penalty is necessary in order to insure that the resale will take place. This penalty seems fair. If the seller keeps the goods and neglects the resale provision, it probably means that the goods are not worn or damaged to any great extent and that their value is practically the same as when the conditional sale was made. It would be unjust to allow the seller to keep these undamaged goods and also retain the part payments of the buyer. The buyer's equity should be protected either by a resale or by a return of his part payments.

In Massachusetts, where the buyer may, in some cases, demand a resale, the penalty for failure to resell is that the right of redemption on the part of the buyer is not foreclosed. In Pennsylvania, where a similar right on the buyer's part to demand a resale exists, there seems to be no penalty for failure to resell after demand.

SUPPLEMENTAL NOTE.—Section 20 of the first draft.

SECTION 24. [Waiver of Statutory Protection.] No act or agreement of the buyer at the time of the making of the contract, nor any agreement or statement by the buyer in such contract, shall constitute a valid waiver of the provisions of Sections **15, 16, 17, 18 and 19.**

NOTES TO SECTION 24.

This section is supported by decisions in three of the states having resale and redemption provisions for the benefit of the buyer. Desseau *vs.* Holmes, 187 Mass. 486; Drake *vs.* Metropolitan Mfg. Co., 218 Mass. 112; Crowe *vs.* Liquid Carbonic Co., 208 N. Y. 396; Massillon Engine & Thresher Co. *vs.* Wilkes, 82 S. W. (Tenn.) 316. In the absence of such a provision unscrupulous sellers would do away with the effect of the statute by waivers printed in small type in the contract. No act should constitute a waiver unless performed after the contract of conditional sale is complete. It seems desirable to provide against waivers outside the contract, but at the time of the making of the contract. Such a waiver, by means of a separate receipt, was attempted in Desseau *vs.* Holmes, *supra.*

SUPPLEMENTAL NOTE.—Section 21 of the first draft.

SECTION 25. [Additional Rights of Buyer.] The buyer under a conditional sale shall have the right when not in default to retain possession of the goods, and he shall also have the right to acquire the property in the goods on the performance of the conditions of the contract. The seller shall be liable to the buyer for the breach of all **promises and** warranties, **express or implied,** made in the conditional sale contract, whether the property in the goods has passed to the buyer at the time of such breach or not.

NOTES TO SECTION 25.

This section is inserted merely for the sake of completeness. The remedies which are common to all buyers of goods, whether the contract be conditional or unconditional, are left to the Uniform Sales Act or to the prevailing common law. The courts have found some difficulty in fixing the rights of the parties where a warranty has been made in a conditional sale contract. Rogers & Thornton *vs.* Otto Gas Engine Works, 7 Ga. App. 587; W. W. Kimball Co. *vs.* Massey, 126 Minn. 461; Peuser *vs.* Marsh, 167 App. Div. (N. Y.) 604; Cooper *vs.* Payne, 186 N. Y. 334; Blair *vs.* A. Johnson & Sons, 111 Tenn. 111. If the seller's promise with respect to the goods has been broken, it is submitted that the buyer ought to be allowed to recover damages suffered by that breach, whether the buyer has become the owner of the goods or not.

SUPPLEMENTAL NOTE.—Section 22 of the first draft.

SECTION 26. [Loss and Increase.] **After the delivery of the goods to the buyer and prior to the retaking of them by the seller,** the risk of injury and loss shall rest upon the buyer. The increase of goods sold under a conditional sale shall be subject to the same conditions as the original goods.

NOTES TO SECTION 26.

The rule with respect to risk of loss is that adopted by the Uniform Sales Act and by a great majority of the states. Uniform Sales Act, Sec. 22; Blue *vs.* American Soda Fountain Co., 43 So. (Ala.) 709;

Hollenberg Music Co. *vs.* Barron, 140 S. W. (Ark.) 582; O'Neil-Adams Co. *vs.* Eklund, 89 Conn. 232; Phenix Ins. Co. *vs.* Hilliard, 52 So. (Fla.) 799; Jessup *vs.* Fairbanks, Morse & Co., 78 N. E. (Ind.) 1050; Burnley *vs.* Tufts, 66 Miss. 48; Tufts *vs.* Wynne, 45 Mo. App. 42; Charles A. Stickney Co. *vs.* Nicholas, 152 N. W. (Neb.) 554; Collerd *vs.* Tully, 78 N. J. Eq. 557; Nat. Cash Reg. Co. *vs.* South Bay Club House Ass'n, 64 Misc. (N. Y.) 125; Whitlock *vs.* Auburn Lumber Co., 145 N. C. 120; Harley *vs.* Stanley, 105 Pac. (Okla.) 188; Carolina, etc., Co. *vs.* Unaka Springs Lumber Co., 130 Tenn. 354; Lavalley *vs.* Ravenna, 78 Vt. 152; Exposition Arcade Corp. *vs.* Lit Bros., 75 S. E. (Va.) 117. It seems desirable to insert this section in the Uniform Conditional Sales Act, although there may be a duplication of legislation in states where the Uniform Sales Act is already in force. The Uniform Sales Act does not expressly refer to conditional sales, but only to sales where the title is reserved as security for the payment of the price. Furthermore, states which have not adopted the Uniform Sales Act may adopt the Uniform Conditional Sales Act.

It is well established that the increase of goods sold under a conditional sale remain the property of the seller until the performance of the condition and then pass to the buyer with the original goods. Anderson *vs.* Leverette, 116 Ga. 732; Allen *vs.* Delano, 55 Me. 113; Desany *vs.* Thorp, 70 Vt. 31.

SUPPLEMENTAL NOTE.—Section 23 of the first draft.

SECTION 27. [Act Prospective Only.] **This act shall not apply to conditional sales made prior to the time when it takes effect.**

SECTION 28. [Rules for Cases not Provided for.] In any case not provided for in this act, the rules of law and equity, including the law merchant, and in particular the rules relating to the law of principal and agent and to the effect of fraud, misrepresentation, duress or coercion, mistake, bankruptcy, or other invalidating cause, shall continue to apply to conditional sales.

NOTES TO SECTION 28.

**This section is modeled after Sec. 73 of the Uniform Sales Act and is inserted for the sake of completeness and clarity.**

SECTION 29. [Uniformity of Interpretation.] This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

SECTION 30. [Title of Act.] This act may be cited as the Uniform Conditional Sales Act.

**SECTION 31. [Inconsistent Laws Repealed.] (Here repeal all existing acts in the field of conditional sales.) But the laws repealed by this section shall apply to all conditional sales made prior to the time when this act takes effect.**

SECTION 32. This act shall take effect.....

# Proposed Uniform Conditional Sales Act

## With Explanatory Notes

## (Third Tentative Draft)

to be submitted to

The National Conference of Commissioners
on Uniform State Laws

at

Cleveland, Ohio, August, 1918

## COMMITTEE ON COMMERCIAL LAW.

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WILLIAM A. BLOUNT,
President of the Conference (*ex officio*).

The following resolution was adopted by The National Conference of Commissioners on Uniform State Laws at Salt Lake City, August 11, 1915:

"*Resolved*, That the subject of Conditional Sales Contracts be referred to the Committee on Commercial Law for consideration, with direction to draft a Uniform Act on that subject, if in its judgment it should seem wise, and to employ such expert assistance as it deems proper."

In accordance with this resolution, the committee retained the services of Professor George G. Bogert, of the Cornell University College of Law, who has prepared the tentative draft of the act. This draft was submitted to the Conference held in Chicago, August 23-29, 1916, and debated section by section. It was then recommitted to the Committee on Commercial Law.

A second tentative draft was submitted to the Conference held at Saratoga Springs, N. Y., August 29, 1917, and debated section by section. It was then recommitted to the Committee on Commercial Law.

The third tentative draft, revised by Professor Bogert and now submitted, represents the conclusions of the committee in the light of the debate of the Conference at Saratoga. They recommend the adoption of the following resolution.

"*Resolved*, By The National Conference of Commissioners on Uniform State Laws that the third tentative draft of an Act to make Uniform the Law of Conditional Sales be and the same is hereby approved, and is submitted to the legislatures of the different states for enactment."

WALTER GEORGE SMITH,

*Chairman.*

*Philadelphia*, April, 1918.

# PROPOSED UNIFORM CONDITIONAL SALES ACT.

## Introductory Notes

The following is a list of the statutes of the various jurisdictions which have legislated upon the subject of conditional sales. Specific references to these statutes are not given in the explanatory notes appended to each section. Should any commissioner desire to examine the statutory provision in any state upon any particular subject, he can readily do so by a reference to this table of statutes, since the number of sections in each state is small.

Alabama.—Code of 1907, Secs. 3394-3395; 3393 (railroad equipment); 7423 (criminal statute).
Alaska.—Rev. Laws of 1913, Secs. 551-555.
Arizona.—Civil Code, Secs. 3278-3281.
Arkansas.—Kirby's Stats. (1904), Secs. 3661-3662 (fraudulent possession statute); 6678-6680 (railroad equipment); 2011 (criminal statute).
California.—Henning's Gen. Laws (1914), Act 3834 (railroad equipment); Penal Code, Sec. 538 (criminal statute).
Colorado.—Mill's Ann. Stats. (1912), Secs. 620-634; 6172-6176 (railroad equipment); 630-633 (criminal statute).
Connecticut.—Gen. Stats. (1902), Secs. 834-835; 4864-4865; 4866-4867 (railroad equipment); 1253 (criminal statute); Acts of 1909, p. 937.
Delaware.—Rev. Code of 1915, Secs. 2631-2632, 452 (railroad equipment).
District of Columbia.—Code of 1910, Secs. 546-547; 833a (criminal statute).
Florida.—Compiled Laws of 1914, Secs. 2516; 2845-2846 (railroad equipment); 3356-3357 (criminal statute).
Georgia.—Code of 1911, Secs. 2790-2792 (railroad equipment); 3318-3319, 3259; 722 (criminal statute).
Hawaii.—Rev. Laws of 1915, Sec. 3120.
Idaho.—Rev. Code of 1908, Secs. 2827-2829 (railroad equipment); 7100 (criminal statute).
Illinois.—Jones & Add. Stats. Ann. (1913), Secs. 8799-8800 (railroad equipment).
Indiana.—Burns' Rev. Stats. of 1914, Secs. 5700-5702; 5526-5530 (railroad equipment).
Iowa.—Code of 1897, Secs. 2051-2053 (railroad equipment); 2905-2906.
Kansas.—Gen. Stats. of 1909, Secs. 7144-7146 (railroad equipment); 3836 (fraudulent possession statute); 5237; 5239 (criminal statute).
Kentucky.—Statutes of 1915, Secs. 2496-2499 (railroad equipment); 1909 (fraudulent possession statute); 1358b (criminal statute).
Louisiana.—Marr's Ann. Rev. Stats., 1915, Secs. 6626-6629 (railroad equipment).
Maine.—Rev. Stats. of 1903, Ch. 113, Sec. 5; Ch. 52, Secs. 95-98; Ch. 117, Sec. 17 (railroad equipment); Ch. 93, Secs. 3-6; Ch. 127, Sec. 1 (criminal statute).
Maryland.—Annotated Code, Art. 21, Sec. 91 (railroad equipment); Art. 27, Sec. 184 (criminal statute); Acts of 1916, Chaps. 327, 355.

MASSACHUSETTS.—Rev. Laws of 1902, Ch. 198, Secs. 11-13; Acts of 1912, Ch. 271 (fixtures); Rev. Laws of 1902, Ch. 208, Sec. 73 (criminal statute); Supp. to Rev. Laws, 1902-1908, Chaps. 111-112, Secs. 59-60 (railroad equipment).

MICHIGAN.—Howell's Mich. Stats. (2d Ed.), Secs. 7037-7039 (railroad equipment); 14659 (criminal statute); Pub. Acts of 1915, p. 112, Sec. 1.

MINNESOTA.—Gen. Stats. of 1913, Secs. 6981-6993; 6225- 6228 (railroad equipment).

MISSISSIPPI.—Code of 1906, Secs. 2785; 4103-4106 (railroad equipment).

MISSOURI.—Rev. Stats. of 1909, Secs. 2889; 2890; 2861; 3311-3313 (railway equipment); 4570 (criminal statute).

MONTANA.—Revised Codes of Mont., Secs. 5092-5094; 4301-4307 (railway equipment); 8689 (criminal statute).

NEBRASKA.—Rev. Stats. of 1913, Secs. 545-546; 2636-2637; 2638-2639 (railroad equipment); 534-535 (criminal statute).

NEW HAMPSHIRE.—Pub. Stats. of 1901, Ch. 140, Secs. 23-26; Pub. Stats. of 1901, Ch. 25, Secs. 1-3 (railroad equipment); Pub. Stats. Supp., 1901-1913, p. 328; Pub. Stats. of 1901, Ch. 140, Secs. 13-14, 16.

NEW JERSEY.—Comp. Stats. of 1911, Vol. II, p. 1561, Secs. 71-73; Vol. III, p. 4254, Sec. 80 (railway equipment); Comp. Stats. of 1911, p. 1805 (criminal statute).

NEW YORK.—Personal Prop. Law, Secs. 60-67; Penal Law, Sec. 940 (criminal statute).

NORTH CAROLINA.—Revisal of 1905, Secs. 982; 983, 984 (railway equipment); Pub. Laws, 1907, Ch. 150; Pub. Laws, 1913, Ch. 60; Rev. Laws of 1905, Sec. 3425 (criminal statute).

NORTH DAKOTA.—Comp. Laws of 1913; Secs. 6757-6758; 4625-4626 (railway equipment); Penal Code, Sec. 10248 (criminal statute).

OHIO.—Page & Adams Ann. Gen. Codes of 1912, Secs. 8568-8570; 12464; 12475 (criminal statute); 9060-9063 (railroad equipment).

OKLAHOMA.—Rev. Laws of 1910, Secs. 1391-1392 (railway equipment); 6745.

OREGON.—Lord's Oregon Laws, 1910, Secs. 6970-6971 (railroad equipment); 7414-7415 (fixtures); 1956 (criminal statute).

PENNSYLVANIA.—4 Purdon's Digest, 1910, p. 3917, Secs. 264-265 (railroad equipment); Acts of 1915, No. 386, p. 866 (fixtures).

RHODE ISLAND.—Gen. Laws of 1909, p. 738, Secs. 63-64 (railroad equipment).

SOUTH CAROLINA.—Code of 1912, Secs. 3740, 3542; 705-707 (railroad equipment).

SOUTH DAKOTA.—Comp. Laws of 1913, Secs. 1315; 490-491 (railroad equipment); 767 (criminal statute).

TENNESSEE.—Code of 1896, Secs. 3666-3670; 3587-3589 (railroad equipment); Acts of 1903, Ch. 199; Acts of 1911, Ch. 8; Code of 1896, Sec. 3152; Acts of 1899, Ch. 15; Acts of 1899, Ch. 12 (criminal statute).

TEXAS.—Vernon's Sayles' Civ. Stats. of 1914, Arts. 5654-5662; 6841.

UTAH.—Comp. Laws of 1907, Secs. 456x2-456x5 (railroad equipment).

VERMONT.—Pub. Stats. of 1906, Secs. 2663-2673; 5785 (criminal statute); 4389-4391 (railroad statute); 2669-2670 (criminal statute).

VIRGINIA.—Code of 1904, Secs. 2462-2462a; Acts of 1908, Ch. 253; Sec. 3719a (criminal statute).

WASHINGTON.—Rem. & Ball. Ann. Stats., Secs. 3670-3672; 2603 (criminal statute); 8741-8742 (railroad equipment); Laws of 1915, Ch. 95.

WEST VIRGINIA.—Code of 1906, Secs. 3101-3105; 3108.

WISCONSIN.—Stats. of 1913, Secs. 2317, 2317f, 2319b; 1839a (railroad equipment); Laws of 1915, Ch. 604.

WYOMING.—Comp. Stats. of 1910, Secs. 3745-3750; 5856 (criminal statute).

CANADIAN PROVINCES.

ALBERTA.—North-West Terr. Cons. Ordinances, 1905-1907, p. 450; as amended by Alberta Stats. of 1908, Ch. 20.
BRITISH COLUMBIA.—Rev. Stats. of 1911, Ch. 20; p. 2532.
MANITOBA.—Rev. Stats. of 1913, Ch. 17.
NEW BRUNSWICK.—Cons. Stats. of 1903, Ch. 143; Acts of 1909, Ch. 31; Acts of 1912, Ch. 30.
NOVA SCOTIA.—Rev. Stats. of 1900, Vol. 2, p. 413; Stats. of 1907, Ch. 42; Stats. of 1908, Ch. 24; Stats. of 1914, p. 59.
ONTARIO.—Rev. Stats. of 1914, Ch. 136.
PRINCE EDWARD ISLAND.—Stats. of 1896, Ch. 6.
SASKATCHEWAN.—Rev. Stats. of 1909, Ch. 145; Stats. of 1910-1911, Sec. 16; Laws of 1915, p. 728.

ENGLAND.—52 & 53 Vic., Ch. 45, Sec. 9 (1889).

TABLE OF CONTENTS OF ACT.

# AN ACT TO MAKE UNIFORM THE LAW OF CONDITIONAL SALES.

*Be it Enacted by*

Section 1. (Definitions.) The term "conditional sale" as used in this act means (1) any contract for the sale of goods under which possession is delivered to the buyer and the property in the goods is to vest in the buyer at a subsequent time upon the payment of part or all of the price, or upon the performance of any other condition or the happening of any contingency; or (2) any contract for the bailment or leasing of goods by which the bailee or lessee contracts to pay as compensation a sum substantially equivalent to the value of the goods, and by which it is agreed that the bailee or lessee **is bound to*** [shall] become, or **has** [shall have] the option of becoming, [or is obligated to become] the owner of such goods upon full compliance with the terms of the contract.

The term "seller" as used in this act means the person who sells or leases the goods covered by the conditional sale, or any legal successor in interest of such person.

The term "buyer" as used in this act means the person who buys or hires the goods covered by the conditional sale, or any legal successor in interest of such person.

The term "goods" as used in this act means all chattels personal other than things in action and money, and includes emblements, industrial growing crops, and things attached to or forming a part of land which are agreed to be severed before sale or under the conditional sale.

The term "filing district" as used in this act means the subdivision of the state in which conditional sale contracts, or copies thereof, are required by this act to be filed.

The phrase "performance of the condition" as used in this act means the occurrence of the event upon which the property in the goods is to vest in the buyer, whether such event is the performance of an act by the buyer or the happening of a contingency.

*Heavy face type indicates new matter which was not in the second draft. Bracketed matter has been stricken from the second draft.

## NOTES TO SECTION 1.

It seems desirable to include sales where title is to pass on *part* payment since the opportunity for deception of the public exists in such cases, ough for a shorter period than when title is retained till full payment. ıe statutes of Montana, New Brunswick, and Ontario expressly include ch contracts. Occasional cases of such reservation of title are to be ınd. Powell *vs.* Clawson, 38 Pa. Super. Ct. 245.

The statutes of Iowa, Nebraska, New Jersey, New York, Virginia, est Virignia, Wisconsin and Wyoming define as conditional sales conıcts which provide for the passing of the property to the buyer upon e performance of *any condition*, not merely upon the payment of the ice. In such cases possession and apparent ownership are rendered ceptive by a reservation of title, and the danger to the public is as great if the condition had been payment of the price. Instances of reserıtions of this kind are not uncommon. Forbes *vs.* Taylor, 139 Ala. 286 ıird party to pay the price); Van Allen *vs.* Francis, 123 Cal. 474 (exetion of mortgage); Tarr *vs.* Stearman, 264 Ill. 110 (rendition of services); ıiley *vs.* Dennis, 135 Mo. App. 93 (execution of note); Clark *vs.* Clement, Vt. 417 (doing of work).

It is well known that some sellers attempt to evade the conditional le recording acts by calling the contract a "lease" or "hiring agreeənt" and providing for the payment of "rent." Wherever these "leases" e substantially equivalent to conditional sales, they should be subject the same restrictions. This equivalency seems to exist when the ıyer is bound to pay rent equal to the price or value of the goods and ıs the option of becoming or is to become the owner of the goods after l the rent is paid. In such a contract "rent" means the purchase price, ıd possession as "lessee" means the possession of a buyer under an exutory contract of sale. That the buyer, in some cases, has the option becoming the owner and thus a sale is not sure to take place, is of but small ıportance, for, as a practical matter, the buyer will always be willing accept ownership when he has paid the price. The instances of a buyer ːclining to become the owner of goods where he has paid "rent" equivalent the value of the goods, and electing to return the goods and allow these ıyments to be considered as actual rent, must be exceedingly infrequent. The statutes of Alabama, Iowa, Maine, Missouri, Ohio, Washington, yoming, and Ontario class as conditional sales leases substantially ɛe those described in section one. In many cases where the "lessee" ıs absolutely agreed to buy the goods at the rent named the contract ıs been held one of conditional sale. Warren *vs.* Liddell, 110 Ala. 232; ındy Furniture Co. *vs.* White, 128 Cal. 170; Coors *vs.* Reagan, 96 Pac. Colo.) 966; Hine *vs.* Roberts, 48 Conn. 267; Staunton *vs.* Smith, 65 Atl. Del.) 593; Hays *vs.* Jordan, 85 Ga. 741; Lucas *vs.* Campbell, 88 Ill. 447; ıger Sewing Mach. Co. *vs.* Holcomb, 40 Iowa 33; Campbell *vs.* Atherın, 92 Me. 66; Smith *vs.* Aldrich, 180 Mass. 367; Wickes Bros. *vs.* Hill, 15 Mich. 333; Gerrish *vs.* Clark, 64 N. H. 492; Equitable Gen. Prov. Co. . Eisentrager, 34 Misc. (N. Y.) 179; Kelly Road Roller Co. *vs.* Spyker, 15 Pa. 332; Carpenter *vs.* Scott, 13 R. I. 477; Pringle *vs.* Canfield, 19 D. 506; Conan *vs.* Singer Mfg. Co., 92 Tenn. 376; Whitcomb *vs.* Woodorth, 54 Vt. 544; Kidder *vs.* Wittler-Corbin Mach. Co., 38 Wash. 179.

"Leases" have likewise been construed to be conditional sale conıacts in numerous cases where the buyer had merely an option to beɔme the owner in return for the rentals paid. Unmack *vs.* Douglass, 5 Conn. 633; Vette *vs.* J. S. Merrill Drug Co., 117 S. W. (Mo.) 666; anter *vs.* Isenrath, 72 Atl. (N. J.) 56; Central Union Gas Co. *vs.* Brownıg, 210 N. Y. 10; Weiss *vs.* Leichter, 113 N. Y. Supp. 999; Hamilton . Highlands, 144 N. C. 279; Sage *vs.* Sluetz, 23 Ohio St. 1; Herring-Hall-Marvin Co. *vs.* Smith, 43 Ore. 315; *In re* Morris, 156 Fed. 597; Singer Mfg. Co. *vs.* Nash, 70 Vt. 434.

Section 2. [25] (Primary Rights of Buyer.) The buyer under a conditional sale shall have the right when not in default to retain possession of the goods, and he shall also have the right to acquire the property in the goods on the performance of the conditions of the contract. The seller shall be liable to the buyer for the breach of all promises and warranties, express or implied, made in the conditional sale contract, whether the property in the goods has passed to the buyer at the time of such breach or not.

NOTES TO SECTION 2.

This section is inserted merely for the sake of completeness. The remedies which are common to all buyers of goods, whether the contract be conditional or unconditional, are left to the Uniform Sales Act or to the prevailing common law. The courts have found some difficulty in fixing the rights of the parties where a warranty has been made in a conditional sale contract. Rogers & Thornton *vs.* Otto Gas Engine Works, 7 Ga. App. 587; W. W. Kimball Co. *vs.* Massey, 126 Minn. 461; Peuser *vs.* Marsh, 167 App. Div. (N. Y.) 604; Cooper *vs.* Payne, 186 N. Y. 334; Blair *vs.* A. Johnson & Sons, 111 Tenn. 111. If the seller's promise with respect to the goods has been broken, it is submitted that the buyer ought to be allowed to recover damages suffered by that breach, whether the buyer has become the owner of the goods or not.

SUPPLEMENTAL NOTE.—Section 22 of the first draft.

Section 3. [21] (Seller's Right to Recover the Price.) The seller may sue for the whole or any installment of the purchase price as the same shall become due under the conditional sale.

NOTES TO SECTION 3.

This section is elementary, but is inserted for the sake of a complete enumeration of the rights of the seller against the buyer. The seller's only remedies are an action for the price or the retaking of the goods or both. Of course, no attempt is made to state the rights of the seller against third persons, as, for example, the right to maintain trover or replevin. Such rights are the same as those of any other owner of personal property.

SUPPLEMENTAL NOTE.—This was Section 18 of the first draft, and Section 21 of the second draft.

**Section 4. (When Filing necessary to protect Seller's title to Goods.) Every provision reserving property in the seller while possession of the goods is in the buyer shall be valid between buyer and seller without writing or filing, and except as provided in Section 13 the reservation shall be valid as against subsequent**

**purchasers, mortgagees and pledgees from the buyer for value, though without notice of the sellers' title, and also as against all creditors of the buyer though without notice of such title, if such contract is in writing and the original or a copy thereof shall have been filed as hereinafter prescribed, previous to such sale, mortgage, pledge, levy or attachment. Except as provided in Section 7 it shall not be necessary to the validity of such conditional sale contract, or in order to entitle it to be filed, that such contract be acknowledged or attested.**

[Section 2. (Contract to be filed.) Except as provided in Section 11, no provision reserving property in the seller in a conditional sale of goods shall be valid for more than thirty days from the date of the execution of the contract against subsequent purchasers, mortgagees or pledgees from the buyer, for value and without notice of the seller's title; or against any creditors of the buyer who levy upon or attach the goods without notice of such title; or against creditors of the buyer who have not levied upon or attached the goods but whose rights accrue subsequent to the conditional sale and who have extended credit to the buyer without notice thereof; unless such contract is in writing and the original, or a copy thereof, shall be filed as hereinafter prescribed. Except as provided in Section 5, it shall not be necessary to the validity of such conditional sale contract, or in order to entitle it to be filed, that such contract be acknowledged or attested.]

NOTES TO SECTION 4.

Statutes requiring the recording or filing of conditional sale contracts now exist in 29 states, namely: Alabama, Arizona, Colorado, Connecticut, Georgia, Florida, Iowa, Kansas, Maine, Minnesota, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Texas, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. In four other states recording statutes partially covering the filing of conditional sales have been passed, namely, in Massachusetts, Michigan, Oregon, and Pennsylvania. In Kentucky these contracts are treated as chattel mortgages and required to be recorded as such. To prevent injury to innocent persons who may rely on the buyer's apparent ownership, it seems desirable to insert this filing requirement in the uniform act. The burden on the seller is slight, and the benefit to the public is great.

The question of difficulty is, in whose favor shall this filing statute operate? Against what persons shall the reservation of title be void in the absence of recording?

As far as subsequent purchasers from the buyer are concerned, the statutes are practically unanimous in protecting them. It seems desirable for the sake of clearness to specify mortgagees and pledgees, even though the general heading of purchasers would doubtless include them.

The statutes of Alabama, Virginia, Washington, West Virginia, New Brunswick, Ontario, and Saskatchewan expressly require that the purchasers to be protected shall have paid "value". This element of value is probably implied in the word "purchaser", but it seems best to express it. There is no equity in protecting donees of the buyer by the recording section. In view of the great variety of definitions of "value", it is deemed wise to leave that question to be determined by the pre-existing local law and not to attempt to make uniform the law by a definition in this act.

It is well established that only purchasers without notice of the conditional nature of the buyer's interest should be protected. Express provisions to that effect are found in the statutes of Kansas, Minnesota, Missouri, Oklahoma, South Carolina, Virginia, West Virginia, New Brunswick, Ontario, and Saskatchewan. See also Anderson *vs.* Adams, 117 Ga. 919; First Nat. Bk. *vs.* Tufts, 53 Kans. 710; VanBuren *vs.* Stubbings, 149 Mich. 206; Barnes *vs.* Rawlings, 74 Mo. App. 531; Kelsey *vs.* Kendall, 48 Vt. 24; Perkins *vs.* Best, 94 Wis. 168.

As to creditors, in a few states, namely, Alabama, Georgia, North Dakota, South Carolina, and Washington, only creditors whose rights accrue subsequent to the conditional sale are protected, but in a great majority of the states the date of the extension of the credit is not important. See the statutes of the various states and Patton *vs.* Phoenix Brick Co., 150 S. W. (Mo.) 1116; Hamilton *vs.* David C. Biggs Co., 179 Fed. 949; (C. C. Ohio); Corbett *vs.* Riddle, 209 Fed. 811 (C. C. A. Va.); Huffard *vs.* Akers, 52 W. Va. 21. In New York creditors are not protected at all by the recording act.

Creditors have been classed in a second way by the courts, namely, as lien creditors and general creditors. In many states there are decisions to the effect that only those creditors who have by judgment, or levy of an execution, or by attachment, secured a lien on the particular goods which were the subject-matter of the conditional sale, are protected. The general creditors of the buyer are not within the protection of the recording act. John Deere Plow Co. *vs.* Anderson, 174 Fed. 815 (C. C. A. Ga.); *In re* Atlanta News Pub. Co., 160 Fed. 519 (D. C. La.); *In re* Hager, 166 Fed. 972 (D. C. Iowa); Big Four Implement Co. *vs.* Wright, 207 Fed. 535 (C. C. A. Kans.); Crucible Steel Co. *vs.* Holt, 174 Fed. 127 (C. C. A. Ky.); Wilson *vs.* Lewis, 63 Neb. 617; Reischmann *vs.* Masker, 69 N. J. L. 353; Mechanics Bank *vs.* Gullett Gin Co., 48 S. W. (Tex.) 627; Malmo *vs.* Shubert, 79 Wash. 534; E. L. Essley Mach. Co. *vs.* Milwaukee Motor Co., 160 Wis. 300. In several states the statutes expressly protect lien creditors only. This is true in Alabama, Montana, Nebraska, New Jersey, Vermont, and Wyoming.

The statute as drafted protects both prior and subsequent creditors who have acquired a lien on the goods by levy or attachment. By such act they have in a certain sense become purchasers of the goods. They have acquired legal property rights in the goods, and, if they have done so innocently, they ought to be protected as against the conditional seller. Their equities are superior to his. General, unsecured creditors, on the other hand, unless they have advanced money or other property on the strength of the buyer's apparent ownership of these particular goods, have no equity as against the conditional seller. They have ac-

quired no lien upon or property in the goods, and have not taken any step in reliance on the possession and apparent ownership of the buyer.

It is submitted that justice to all deserving creditors will be worked out if only secured or lien creditors and subsequent creditors who have relied on the buyer's apparent ownership are protected.

It is very generally held that creditors, in order to claim the protection of the statute, must have been without notice of the conditional nature of the buyers' rights at the time when their rights were fixed. See the statutes of Alabama, Arizona, Iowa, Nebraska, New Jersey, North Dakota, South Dakota, and Washington. See also Diamond Rubber Co. *vs.* Fourth Nat. Bk., 55 So. (Ala.) 1911; Jones *vs.* Clark, 20 Colo. 353; Reisman *vs.* Wester, 72 S. E. (Ga.) 942; F. P. Gluck Co. *vs.* Therme, 134 N. W. (Iowa) 438; Dyer *vs.* Thorstad, 35 Minn. 534; Norton *vs.* Pilger, 30 Neb. 860; Batchelder *vs.* Sanborn, 66 N. H. 192; *In re* Vandewater & Co., 219 Fed. 627 (D. C. N. J.); McPhail *vs.* Gerry, 55 Vt. 174; Secor *vs.* Close, 145 Pac. (Wash.) 56; Wolf Co. *vs.* Kutch, 147 Wis. 209.

In a majority of the states the contract or a copy may be filed. See the statutes of Arizona, Kansas, Michigan, Minnesota, Missouri, Montana, New York, North Dakota, Ohio, Oklahoma, Texas, Wisconsin, Wyoming, and Saskatchewan. In Alabama, Iowa, and New Jersey the contract itself must be recorded. In Nebraska, New Brunswick, Ontario, and Prince Edward Island the copy alone may be filed. In New Hampshire, Virginia, Washington, and West Virginia only a memorandum of the contract need be filed. To require that the original contract or a copy be filed seems best. Doubtless generally a copy will be filed. It seems useless to restrict the seller to either the original or a copy. The object is to make public the terms of the sale. The exact words of the contract will do that better than any abbreviation or memorandum.

Supplemental Note.—The original section has been changed so as to make the contract valid for thirty days without filing. On more mature consideration it was thought unwise to require the seller to file immediately. The seller's office may be far distant from the filing district. He should have a reasonable time to mail his papers and get them filed.

It has seemed wise to insert an express provision to the effect that acknowledgements or attestations are not necessary, in view of the present requirement in a few states that the contract be attested or acknowledged by the buyer.

Second Supplementary Note.—This section has been recast with two objects: (1) the section is now stated in the affirmative rather than the negative form to make it certain that conditonal sale contracts will be regarded as valid in all states if certain formalities are complied with. In a small number of states the present law is unfavorable to the validity of conditional sales, with or without filing. It is desirable to state that these transactions are valid if certain requirements are met, rather than to state that conditional sales are invalid unless given formalities are complied with: (2) the committee has altered the section so that only creditors of the buyer who have levied upon or attached the goods have rights superior to the seller in case the seller does not file his contract. General creditors, that is, those who have not levied or attached, are inferior to the conditional seller even though there has been no filing.

Section 5. (Place of Filing.) The conditional sale contract or copy shall be filed in the office where deeds of real property are recorded in the (city,) county (or registration

district) in which the goods are **kept by the buyer after the sale** [delivered for use]. This section shall not apply to the contracts described in Section 7.

NOTES TO SECTION 5.

The filing statutes now in force are of two classes with respect to the place of record required. One requires record in a local office, such as the town clerk's office: the other class makes the county the unit of record. Connecticut, Maine, Massachusetts, Michigan, New Hampshire, New York (with some exceptions), Vermont, and Wisconsin have the town recording system. The twenty-three other states having recording statutes require record in the county office where deeds are recorded and all important records with respect to real property are kept.

The county system has seemed the better, since the records in the county office will be kept in much more orderly fashion than in the town offices, and since the convenience of persons desiring to deal with the goods will be served quite as well by a record in the principal town or city of the county as if the record were located in some remote office in the country.

The next question to be decided is, which county shall be made the county of record? There are but two practical choices, namely, the county of the buyer's residence and the county of the delivery of the goods.

Connecticut, Iowa, Maine, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Ohio, South Carolina, South Dakota, Washington, Wisconsin, New Brunswick, Ontario, Prince Edward Island, and Saskatchewan (15 states and 4 Canadian provinces) require record in the district of the *buyer's residence.*

Arizona, Montana, North Dakota, Virginia, West Virginia, and Wyoming (6 states) record in the county where the goods were at the time of sale.

Oklahoma and Kansas (2 states) record where the goods shall be kept after the sale.

In Alabama, Georgia and Michigan a double record is required, one in the district of the buyer's residence and one in the district where the goods were delivered. In Texas the record may be either in the county of the buyer's residence or in the county of delivery.

The desideratum is to have a record in the county where the goods are permanently kept. It is there that innocent purchasers and creditors will be misled by the apparent ownership of the buyer. Record in the county of the buyer's residence is of little importance, unless the goods are kept there. The goods will be kept in most instances in the county where they are delivered. The county of delivery is easily ascertained. There can be no mistake about its identity. Where the buyer resides may be a question of some complexity.

It has seemed that the problem could best be solved by requiring filing in the county of delivery, and following that requirement by provisions respecting removal of the goods from the county of original delivery. Such latter provisions are made in Sections 12 and 13 of the act.

In most cases the goods will be delivered, the buyer will reside and the goods will be kept in one and the same county. Then but one filing will be required. In the instances where the county of the buyer's residence does not coincide with the county of delivery, record at the place of delivery will be more useful. Record at the buyer's residence will be of slight value.

If the goods are moved to a new county after the original delivery, the burden of two filings will be put on the seller, but the safety of the public justifies it. The seller is given 30 days after such removal to file the contract in the new county. This period in which to seek information as to removals, coupled with the penalty upon the buyer for removal without consent of the seller, will reduce to a minimum, it is believed, the danger to the seller and to the public from removals of goods.

In some states there are districts which are not within any county. Thus, Baltimore and St. Louis are, it is understood, not within the borders of any county. Conditional sale contracts in such cases would have to be filed in a city office and not in a county office. In other cases the unit of record is not the county, as in some cases in Massachusetts where a county is divided into two registration districts, and in Louisiana, where the parish is the unit. These special cases may be provided for by the insertion of the words "city" or "registration district," together with county. In most states the bracketed words "city" and "or registration district" may be omitted. This same question has been met in a similar way in some later sections of the act.

SUPPLEMENTAL NOTE.—The second draft requires filing in the district "in which the goods are delivered *for use.*" Frequently the goods are immediately removed from the original place of delivery. It is desirable to require filing in the district where the goods are to remain with some degree of permanence. If goods are shipped from seller to buyer at the buyer's expense, the goods are delivered to the carrier as an agent of the buyer. Yet it would be senseless to require filing at the place of delivery to the carrier.

SECOND SUPPLEMENTARY NOTE.—The committee has changed the words "delivered for use" to "kept after the sale." The words "for use" were deemed too ambiguous, and the word "delivered" was also considered to be one which might give rise to difficult questions of construction. The place where the goods are kept by the buyer with some degree of permanence after the sale is the place where the filing should occur.

**Section 6. (Fixtures.) If the goods are so affixed to realty at the time of a conditional sale or subsequently as to become a part thereof and not to be severable without material injury to the freehold, the reservation of property shall be void after the goods are so affixed. If the goods are so affixed to realty at the time of a conditional sale or subsequently as to become part thereof but to be severable without material injury to the freehold, the reservation of property shall be void after the goods are so affixed as against subsequent purchasers or mortgagees of the realty for value and without notice of the conditional seller's title, unless the conditional sale contract, or a copy thereof, together with a statement signed by the seller briefly describing the realty and stating that the goods are or are to be affixed thereto, shall be filed previous to such purchase or mortgage in the office where a deed of the realty would be re-**

**corded. As against the owner of realty the reservation of the property in goods by a conditional seller shall be void when such goods are to be so affixed to the realty as to become part thereof but to be severable without material injury to the freehold, unless the conditional sale contract, or a copy thereof, together with a statement signed by the seller briefly describing the realty and stating that the goods are to be affixed thereto, shall be filed before they are affixed, in the office where a deed of the realty would be recorded.**

[Section 4. (Fixtures.) If, at the time of such sale or thereafter, the goods are so affixed to realty as to become part thereof, the conditional sale shall be void after the goods are so affixed, against owners and against subsequent purchasers or mortgagees of the realty, for value and without notice of the conditional seller's title, unless the conditional sale contract, or a copy thereof, together with a statement signed by the seller briefly describing the realty and stating that the goods are affixed thereto, shall be filed in the office where a deed of the realty would be recorded.]

NOTES TO SECTION 6.

In practically all American states a conditional seller who has reserved title to a chattel which is affixed by the vendee to his real property has no rights against a subsequent purchaser or mortgagee of the real property who has no notice of the conditional sale of the chattel. Price *vs.* Case, 10 Conn. 375; J. S. Schofield Sons Co. *vs.* Woodward, 72 S. E. (Ga.) 509; Allis-Chalmers Co. *vs.* City of Atlantic, 144 N. W. (Iowa) 346; Rowand *vs.* Anderson, 33 Kans. 264; Jenks *vs.* Colwell, 66 Mich. 420; Hopewell Mills *vs.* Taunton Sav. Bk., 150 Mass. 519, 521; Tibbotts *vs.* Home, 65 N. H. 242; Brennan *vs.* Whittaker, 15 Ohio St. 446; Washburn *vs.* Inter-Mountain Mining Co., 109 Pac. (Ore.) 382; Union Bank *vs.* Wolf Co., 114 Tenn. 255, 4 Am. & Eng. Ann. Cases 1073; Davenport *vs.* Shants, 43 Vt. 546.

In four states comparatively recently statutes have been enacted declaring that the condition reserving title to fixtures shall be void as against subsequent purchasers or mortgagees of the real property who have no notice of the conditional sale, unless the conditional sale contract is recorded in the office where a deed of the land would be recorded. See the statutes of Massachusetts, New York, Oregon and Pennsylvania.

Section 6 above is modeled after these statutes. It seems desirable to give the conditional seller a chance to protect himself against dealers with the real estate by the making of a record. If this record is in the same office where deeds of real property are recorded, the labor of searching for conditional sale contracts on the part of the prospective buyer or mortgagee of the land will be slight.

The contract will, under the provisions of Sections 5 and 13, already be filed in the proper office if the seller performs his duty, for the contract will be recorded in the county office where deeds are recorded. Section

6 will place but a slight added burden on the seller where the goods are a fixture, namely, that of filing a statement that the goods are attached to described real property.

SECOND SUPPLEMENTARY NOTE.—This section has been recast with the object of distinguishing between goods affixed to realty which have lost their identity and goods affixed to realty which can be readily severed. A separate paragraph has also been inserted to cover the peculiar case of the sale of goods to a contractor to be affixed by him to the real property of another, in other words, the case of the validity of the conditional sale of a fixture as against the "owner" of the realty.

Section 7. (Railroad Equipment or Rolling Stock.) No conditional sale of railroad, or street **or interurban** railway equipment or rolling stock shall be valid as against the purchasers, mortgagees, pledgees and creditors described in Section 4, unless the contract shall be acknowledged by the buyer or attested in like manner as a deed of real property, and the contract, or a copy thereof, shall be filed in the office of the Secretary of State; and unless there shall be plainly and conspicuously marked upon each side of any engine or car so sold the name of the seller, followed by the word "owner."

NOTES TO SECTION 7.

Statutes making special provision for the conditional sale of railroad and street railway rolling stock and equipment are now found in 46 states. They are strikingly similar.

*Goods Covered by the Statutes.* The phrase most commonly used to describe the goods covered by these statutes is "railroad and street railway equipment and rolling stock." In a few states interurban equipment and rolling stock are specifically mentioned, and there seems to be no reason why they should not be included. In some states only railroad equipment and rolling stock are mentioned. The slight variations of wording are so numerous that they cannot be detailed here. The words used in Section 5 are supported by a majority of the statutes.

*Acknowledgement Required.* Acknowledgment is required in 40 of the 46 states having these railroad statutes. It seems desirable to give some formality to the contract, in view of the large amounts of money generally involved and the fact that record is required in a state office.

*Persons Protected.* The existing statutes in most instances make the reservation of title void as against judgment creditors and purchasers in good faith. It seems desirable to give the protection of the statute, in case of failure to record, to the same persons named in the general filing statute herein, Section 4.

*Place of Record.*—In 28 of the states the place of record is made the office of the Secretary of State and in four others record is required in that office and also in a county office. In view of the statewide nature of the business often involved and the importance of the contracts, state registration may be justifiable.

*Marking of Engines and Cars.* In all but four of the 46 states the engines and cars are required to be marked with the name of the seller and a statement indicating his ownership. This provision is continued in Sec ion 5 above.

*Duration of Conditional Sale Contracts of Railroad Equipment.* In 12 states the time during which these contracts can run is limited. In Arizona, Delaware, Minnesota, Montana, North Dakota, South Dakota, and Wisconsin the limit is 10 years; in Mississippi and Tennessee 15 years, in Maryland 20 years, and in Colorado and Kentucky 25 years. A provision requiring the refiling of these contracts at the end of fifteen years has been inserted in Section 10.

Section 8. (Conditional Sale of Goods for Resale.) When goods are [sold] **delivered** under a conditional sale contract and the seller expressly or impliedly consents that the buyer may resell them prior to performance of the condition, the **reservation of property** [condition] shall be void against purchasers from the buyer for value in the ordinary course of business, and as to them the buyer shall be deemed the owner of the goods, even though the contract or a copy thereof shall be filed according to the provisions of this act[.]; **but as to other persons the transaction shall be governed by Section 4.**

NOTES TO SECTION 8.

This section attempts to state a rule of law quite widely recognized. Bass *vs.* International Harv. Co., 53 So. (Ala.) 1014; Flint Wagon Works *vs.* Malone, 81 Atl. (Del.) 502; Clarke Bros. *vs.* McNatt, 132 Ga. 610; Trousdale *vs.* Winona Wagon Co., 25 Idaho 131; Barbour *vs.* Perry, 41 Ill. App. 613; Winchester Wagon Works *vs.* Carman, 109 Ind. 31; Rogers *vs.* Whitehouse, 71 Me. 722; Spooner *vs.* Cummings, 151 Mass. 313; Pratt *vs.* Burhans, 84 Mich. 487; Columbus Buggy Co. *vs.* Turley, 73 Miss. 529; Baker *vs.* Tolles, 68 N. H. 73; Fitzgerald *vs.* Fuller, 19 Hun 180; Star Mfg. Co. *vs.* Nordeman, 118 Tenn. 384; Oconto Land Co. *vs.* Wallschlaeger, 155 Wis. 418. Where the same seller attempts to reserve the property in himself and at the same time to allow a resale by a retailer in the ordinary course of business, he is doing two inconsistent things. A purchaser from a retailer in the ordinary course of business ought not to be obliged to examine the records to learn whether the retailer has title or whether title has been reserved under a conditional sale contract. That the goods have been put into the retailer's stock with the consent of the wholesaler is conclusive evidence that they are there for sale and that the retailer has title or the right to convey.

The mere constructive notice of the record of the contract ought not to prevail as against a buyer from a retailer in the ordinary course of business. Mortgagees, pledgees and creditors of the retailer are, of course, bound by the provisions of the recording act and will have constructive notice of the conditional sale, but in the case of purchasers in the ordinary course of business, as distinguished from purchasers of the stock in bulk, no notice of the conditional sale should be effectual to bind them.

Public Acts of Michigan, 1915, p. 112, Sec. 1, requires that a contract for the conditional sale of goods to a retailer to be resold by him shall be recorded in order to be valid as against anyone except the seller and buyer. But in Michigan there is no general recording statute.

Section 9. (Filing.) The filing officer shall mark upon the contract or copy filed with him the day and hour of filing and shall file the contract or copy in his office for public in-

spection. He shall keep a separate book in which he shall enter the names of the seller and buyer, the date of the contract, the day and hour of filing, a brief description of the goods, the price named in the contract and the date of cancellation thereof; except that in entering the contracts mentioned in Section 7 the Secretary of State shall record either the sum remaining to be paid upon the contract or the price of the goods. Such book shall be indexed under the names of **both** [the] seller and [of the] buyer. For filing and entering such contract or copy the filing officer shall be entitled to a fee of (ten cents), except that for filing and entering a contract described in Section 7 the Secretary of State shall be entitled to a fee of (one dollar).

NOTES TO SECTION 9.

In Minnesota, Montana, Nebraska, New York, Texas, Virginia, Washington, Wisconsin, Wyoming, New Brunswick, Ontario, Prince Edward Island, and Saskatchewan the statutes expressly provide as to the duties of the clerk receiving a conditional sale contract for filing. The provisions are, in the main, like those above indicated. The clerk would, in order to make the record effective, necessarily be obliged to have some such system of recording, but it seems better to require it expressly rather than to leave it to the discretion of the various officers concerned. Uniformity of style of record is of some importance.

The filing fee for ordinary contracts is 50 cents in Montana and Prince Edward Island; 25 cents in Nebraska, Virginia, Washington, Wyoming, and Saskatchewan; 12 cents in New York and Wisconsin, and 10 cents in Minnesota, New Brunswick, and Ontario. It is desirable to encourage sellers to file their contracts, and therefore the fee of 10 cents has been selected. The labor of the clerk will be very slight.

The fee for filing contracts with respect to railroad equipment is found to be $15 in two states, $10 in one state, $5 in seven states, $2 in four states, and $1 in four states. The fee of $1 seems adequate to compensate the Secretary of State.

The amount of the fee has been bracketed to indicate the possibility of local variation upon this point.

SUPPLEMENTAL NOTE.—The exception made in lines 7, 8, 9 and 10 is necessitated by the fact that many car trust equipment contracts do not mention the purchase price but only the balance due on the contract.

Section 10. (Refiling.) The filing of conditional sale contracts provided for in Sections 4, 5 and 6 shall be valid for a period of three years only. The filing of the contract provided for by Section 7 shall be valid for a period of fifteen years only. The validity of the filing may in each case be extended for successive additional periods of one year from the date of refiling by filing in the proper filing district a copy

of the original contract within thirty days next preceding the expiration of each period, with a statement attached signed by the seller, showing that the contract is in force and the amount remaining to be paid thereon. Such copy, with statement attached, shall be filed and entered in the same manner as a contract or copy filed and entered for the first time, and the filing officer shall be entitled to a like fee as upon the original filing.

NOTES TO SECTION 10.

In only a few jurisdictions are there provisions limiting the duration of the record of conditional sale contracts. In Minnesota the record is good for but six years, in Nebraska for five years, in Saskatchewan for two years, and in New York, Wisconsin and Wyoming for one year only. Notwithstanding the slight acceptance of this principle of refiling, it seems desirable to the draftsman to require a refiling after three years. The ordinary conditional sale contract will be performed or breached before that time. If a contract extends over a period longer than three years, a fresh record should be made at the end of the three years. Searchers should not be obliged to go back for an indefinite period to discover whether the title to a piano is in the possessor of it.

As shown in the notes to Section 7, in 12 states the validity of car trust contracts is limited, the periods ranging from 10 to 25 years. A longer time is ordinarily required for the performance of these contracts than for the performance of an ordinary conditional sale contract. It would seem that 15 years, with a provision for refiling at the end of that time, would be sufficient.

Section 11. (Cancellation of Contract.) After the performance of the condition, upon **written** demand **delivered personally or by registered mail** by the buyer or any other person having an interest in the goods, the seller shall execute and deliver to the **the demandant** [him] a statement that the condition in the contract is performed and that the buyer has become the owner of the goods. If for ten days after such demand the seller fails to mail or deliver such a statement of satisfaction, he shall forfeit to the demandant five dollars ($5.00) and be liable for **all** [the actual] damages suffered. Upon presentation of such statement of satisfaction the filing officer shall file the same and note the cancellation of the contract and the date thereof on the margin of the page where the contract has been entered. For filing and entering the statement of satisfaction the filing officer shall be entitled to a fee of (ten cents), except that the Secretary of State shall be entitled to a fee of (fifty cents) for filing and entering a statement of the satisfaction of a contract described in Section 7.

NOTES TO SECTION 11.

The procedure upon the cancellation of a conditional sale agreement, due to performance, is expressly provided for in but few states. In Minnesota, New York, Vermont and Virginia, and in New Brunswick and Saskatchewan, provisions similar to those made in Section 9 are set forth in the statutes. Here, as in the case of filing and refiling, it seems desirable to make the record uniform and to prescribe an orderly procedure to be followed in dealing with these contracts. The clerk would in most cases probably, without statutory direction, treat the question of cancellation as above provided, but it is advantageous to make certain such treatment.

The fees for the cancellation of the railroad equipment contracts, as set forth in the present statutes, range from three dollars to fifty cents. In the majority of states in which provisions have been found, namely, in 12, the fee is one dollar. The fee of fifty cents seems adequate to compensate the Secretary of State for his labor, and seems in correct proportion to the fee of one dollar for filing the contract.

Section 12. (Prohibition of Removal or Sale Without Notice.) Unless the contract otherwise provides, the buyer under a conditional sale contract may, without the consent of the seller, remove the goods from any filing district and sell, mortgage or otherwise dispose of his interest in the goods; but prior to the performance of the condition, no such buyer shall remove the goods from a filing district in which the contract or a copy thereof is filed, except for temporary uses for a period of not more than thirty days, unless the buyer **not less than five days** before such removal shall give the seller **personally or by registered mail** written notice of the place to which the goods are to be removed and the approximate time of such intended removal; nor prior to the performance of the condition shall the buyer sell, mortgage or otherwise dispose of his interest in the goods, unless the buyer, or the person to whom he is about to sell, mortgage or otherwise dispose of his interest in the goods, shall notify the seller in writing **personally or by registered mail** of the name and address of the person to whom his interest in the goods is about to be sold, mortgaged or otherwise transferred, not less than five days before such sale, mortgage or **other** disposal. If without such notice any buyer does so remove the goods, or does so sell, mortgage or **otherwise** dispose of his interest in the goods without such notice **or in violation of the contract,** the seller may retake possession of the goods and deal with them as in case of default in payment of part or all

of the purchase price. The provisions of this section regarding the removal of goods shall not apply, however, to the goods described in Section 7.

NOTES TO SECTION 12.

Unless there is a record of the conditional sale contract in the county in which the goods are located, the public is apt to be defrauded. Innocent buyers and chattel mortgagees will naturally examine only the records of the county in which the goods are located. They are not apt to know where the goods were originally delivered, or where the possessor of them lived, when he bought them. It seems desirable to compel the seller to make a new record of the contract when the goods are moved into a new county, or for the first time brought into the state. In order that it may be reasonable to compel the seller to make this record, every effort must be made to give the seller notice of the removal. He will naturally learn in many cases of such removal, because he will be collecting the part payments and will be looking for the buyer. But if a civil penalty is placed upon removal by the buyer without notice to the seller, the chances of the seller knowing of such removal and being able to file the contract in the new county will be greatly increased. In view of the danger to the seller if the goods are taken into a new county where there is no record, the penalty of allowing the seller to retake the goods as on default, does not seem too harsh.

In Texas the seller is allowed to retake the goods if the buyer removes them from the county without his consent. In Vermont for the removal of the goods from the state without the seller's consent the buyer may be subjected to a penalty of twice the value of the goods. In Saskatchewan removal from the registration district without 20 days' written notice to the seller is prohibited under penalty of $100 fine.

It seems unreasonable to compel the buyer to get the consent of the seller to a removal to a new county or a new state. Such consent might be withheld unjustly by the seller. If the seller knows of the removal, he can refile the contract. Such refiling is what is desired, not an absolute prohibition against moving the goods about from place to place.

Conditional sale contracts frequently contain provisions prohibiting removal and allowing retaking by the seller on that account and such provisions have been enforced by the courts. Hall *vs.* Draper, 20 Kans. 137.

The interest of the buyer ought to be assignable before complete payment, but the assignment is of so much importance to the seller that he should receive notice of it as soon as possible. The section requires notice to be given under penalty of allowing the seller to treat the buyer as if in default. If the seller is to look to another than the original buyer for his payments, he should know that fact as soon as possible. If the seller is not obliged to look to that other for the payments, he should know that possession of the goods has passed to another or that another claims some interest in the goods. The statutes of at least 27 states make a sale by the buyer criminal, in some cases merely where such sale is without the written consent of the seller, and in others where the subsale or other transfer is with fraudulent intent.

Section 13. (Refiling on Removal.) When, prior to the performance of the condition, the goods are removed by the buyer from a filing district in this state to another filing dis-

trict in this state in which such contract or a copy thereof is not filed, or are removed from another state into a filing district in this state where such contract or copy is not filed, the reservation of the property in the seller shall be void as to the purchasers, mortgagees, pledgees and creditors described in Section 4, unless the conditional sale contract or a copy thereof shall be filed in the filing district to which the goods are removed, within thirty days after **the seller has knowledge** [notice] of the filing district to which the goods have been removed. The provisions of this section shall not apply, however, to the goods described in Section 7. The provisions of Section 10 regarding the duration of the validity of the filing and the necessity for refiling shall apply to contracts or copies which are filed in a filing district other than that where the goods **are originally kept by the buyer after the sale** [were originally delivered for use].

NOTES TO SECTION 13.

As stated previously, the county where the goods are located is the county where it is important to have the record for the purpose of protecting the public. In a few jurisdictions the statutes provide that the seller must refile the contract on a removal of the goods to a new county and on the bringing of the goods into the state for the first time. This refiling is not required to be immediate. In Alabama the refiling must be within 30 days after the removal, in Georgia within six months, in Mississippi within 12 months, in Texas within four months, in West Virginia within three months, and in Saskatchewan within 60 days. It might be unreasonable to require the seller to make a new record at once. He should be given time to learn of the removal and to prepare and send his papers for record. Most sellers collect part payments frequently and will thus learn of the removal. The provisions of Sections 10 and 12 will assist in bringing the removal to the seller's attention. The thirty-day period within which the notice must be filed seems not too strict a requirement.

A large number of cases have arisen in which the principal question was as to the law which controlled where goods were removed from one state to another. It seems to be settled that if the goods are sold in state A for the purpose of being removed to state B, the law of state B will control regarding the recording of the conditional sale contract. Summers *vs.* Carbondale Mach. Co., 173 S. W. (Ark.) 194; Beggs *vs.* Bartels, 73 Conn. 132; David Bradley & Co. *vs.* Kingman Implement Co., 112 N. W. (Neb.) 346; Lanston Monotype Mach. Co. *vs.* Curtis, 224 Fed. 403; Potter Mfg. Co. *vs.* Arthur, 220 Fed. 843; *In re* Gray, 170 Fed. 638. But if the goods are sold under a conditional sale contract in state A and delivered in state A, and after some use they are removed to state B, there is a great conflict of opinion. In the following cases the law of state A, the state where the contract was made, controlled as to the conflicting rights of the seller and claimants under the buyer: Fuller *vs.* Webster, 95 Atl. (Del.) 335; Harper *vs.* People, 2 Colo. App. 177; Waters *vs.* Cox, 2 Bradw. (Ill.) 129; Baldwin *vs.* Hill, 4 Kans. App. 168; Gross *vs.* Jordan,

83 Me. 380; Davis *vs.* Osgood, 69 N. H. 427; Warnken *vs.* Chisholm, 8 N. D. 243; Studebaker Bros. Co. *vs.* Mau, 13 Wyo. 358. In the following cases the law of state B, the state to which the goods were removed, controlled as to the formalities necessary to protect the seller's rights under the conditional sale contract: Corbett *vs.* Riddle, 209 Fed. 811; Public Parks Amus. Co. *vs.* Embree-McLean Co., 64 Ark. 29; Weinstein *vs.* Freyer, 93 Ala. 257; North *vs.* Goebel, 138 Ga. 739; Marvin Safe Co. *vs.* Norton, 48 N. J. L. 410; Emerson Co. *vs.* Proctor, 97 Me. 360; National Cash Register Co. *vs.* Paulson, 16 Okla. 204; Sanger *vs.* Jesse French Co., 21 Tex. Civ. App. 523.

If a uniform law with respect to conditional sales were adopted, and this law provided for the refiling of the contract upon removal of the goods, the difficulties illustrated by these cases would be avoided. A slight extra burden would be placed upon the seller in refiling the contract, but much litigation and loss on the part of the innocent public would be prevented. It is believed that the seller will, in most cases under this act, know of the removal of the goods out of the county or out of the state. If he does not refile his contract for the protection of the public in the new jurisdiction, he should be the loser and not the innocent buyers, mortgagees or creditors.

SUPPLEMENTAL NOTE.—In the second draft the seller is given thirty days after he receives notice of the removal within which to refile the contract in the new county. If the buyer performs his duty, the seller will know of the removal. If he does know of it, it is fair to require a refiling for the protection of the public.

Section 14. (Fraudulent Injury, Concealment, Removal or Sale.) **When, prior to the performance of the condition, the buyer** [**Every** buyer of goods under a conditional sale who,] maliciously or with intent to defraud [prior to the performance of the condition] shall injure, destroy or conceal the goods, or remove them to a filing district where the contract or a copy thereof is not filed, **without having given the notice required by Section 12,** or shall sell, mortgage, or otherwise dispose of such goods under claim of full ownership, he shall be guilty of a crime and upon conviction thereof shall be imprisoned in the county jail for not more than one year or be fined not more than ($500) or both.

NOTES TO SECTION 14.

Provisions of this sort imposing a criminal penalty for acts done with a fraudulent intent and calculated to destroy the seller's security are very common. It seems desirable to insert such a section for the prevention of fraud upon the seller, and also fraud upon the innocent public in some cases.

In Kansas, Missouri, Nevada, New Jersey, Ohio, Oregon, and Washington the statute makes fraudulent destruction of the goods a crime.

In Kansas, Missouri, Oregon, South Dakota, and Washington fraudulent injury of the goods is a crime.

In Connecticut, District of Columbia, Idaho, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Missouri, Nevada, New Hampshire, New Jersey, New York, North Dakota, Ohio, Oregon, South Dakota, Tennessee, and Washington fraudulent concealment of the goods is covered by the criminal statute.

In Arkansas, California, Connecticut, District of Columbia, Florida, Idaho, Maryland, Michigan, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, North Dakota, Ohio, Oregon, South Dakota, Virginia, Washington, and Wyoming the statutes make fraudulent removal a crime.

In Alabama, Arkansas, California, Colorado, Connecticut, District of Columbia, Florida, Georgia, Idaho, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Ohio, South Dakota, Tennessee, Vermont, Virginia, Washington, and Wyoming the fraudulent sale or other disposal of the goods is a crime.

The fines imposed vary from $1000 as a maximum in Nebraska, Nevada, New Hampshire, and North Dakota to $5.00 as a minimum in Virginia. The periods of imprisonment to which the criminal may be sentenced vary from 10 years as a maximum in Nebraska to 15 days as a minimum in Kentucky and Virginia. The one year period of imprisonment seems reasonable as a maximum and it seems desirable to make the possible fine depend upon the value of the goods.

Some of these criminal statutes apply specifically only to conditional sales, others to conditional sales and chattel mortgages, and still others by their express wording might seem to be confined to cases of chattel mortgages. The latter class are inserted here, since the offense in the case of fraud on the part of a chattel mortgagee is essentially similar, and doubtless in many cases the statutes have been held to apply to conditional sales by implication.

SUPPLEMENTAL NOTE.—Note the insertion in lines 2 and 3 of the word "maliciously" to provide for cases of the wanton destruction of goods to prevent their retaking. Such destruction is said to be fairly frequent.

Section 15. (Retaking Possession.) When [ever] the buyer under a conditional sale shall be in default in the payment of any sum due under the contract, or in the performance of any other condition which the contract requires him to perform in order to obtain the property in the goods, or in the performance of any promise, the breach of which is by the contract expressly made a ground for the retaking of the goods, the seller may retake possession thereof. Unless the goods can be retaken without breach of the peace, they shall be retaken by legal process; but nothing herein shall be construed to authorize a violation of the criminal law.

NOTES TO SECTION 15.

This right on the part of the seller is an elementary one. It is generally reserved in the contract, but it is deemed wise to make it a statutory right, rather than a right to be contracted for. This right is restricted and limited by the following sections, which prescribe what the seller must do after resuming possession.

It is deemed unnecessary to insert a statement that the seller may resume possession wihout process, if he can do so without breach of the peace; but that he must resort to legal process if he cannot obtain the goods without breach of the peace.

SUPPLEMENTAL NOTE:—On further consideration the committee deemed it wise to insert the sentence in lines 8 and 9.

Section 16. (Notice of Intention to Retake.) Not more than forty nor less then twenty days prior to **the** [such] retaking, the seller may serve upon the buyer personally or by registered mail a notice of intention to retake the goods on account of the buyer's default. **The** [such] notice shall state the **default** [sum due under the contract] and the period at the end of which the goods will be retaken [time of intended retaking], and shall briefly and clearly state what the buyer's rights under this act will be in case the goods are retaken. If **the** [such] notice is so served and the buyer does not perform before the day set for retaking **the** [his] obligations **in which he has made default** [under the contract], the seller may retake the goods and hold them subject to the provisions of Sections 18, 19, 20, 21 and 22 regarding resale, but without any right on the part of the buyer to redeem the goods.

NOTES TO SECTION 16.

This section was not in the original draft. It is inserted between old Sections 13 and 14. Its object is to enable the seller to avoid unnecessary expense and trouble. Often the seller would without this section, have to make one trip to the buyer's town to retake the goods, then store the goods at considerable expense during the redemption period, and lastly make a second trip to the buyer's town to resell the goods. If the buyer has from twenty to forty days' notice that he must pay up or lose the goods, his rights are as well protected as if he had a ten days' period of redemption after the goods have been retaken. The object is to give the buyer a reasonable time to raise the back payments. Either a notice of intention to retake or a period of redemption after retaking will give the buyer protection. If the former enables the seller to avoid useless trouble and expense, the seller should have the option of taking either method.

SUPPLEMENTARY NOTE.— The words "sum due under the contract" in the second sentence of this section have changed to "default" in order to cover cases where the default was something other than failure to pay a sum of money. A change has also been made in the third sentence to make it clear that the buyer may retain the goods if he performs the obligations which are then due and that it is not necessary for him to perform all the obligations under the contract, whether due or not due.

Section 17. (Redemption.) If the seller does not give the notice of intention to retake described in Section 16, he shall retain the goods for ten days after the retaking within

the state in which they were located [at the time of the retaking] **when retaken,** during which [time] **period** the buyer, upon payment or tender of the amount due under the contract at the time of retaking and interest, or upon performance or tender of performance of such other condition as may be named in the contract as precedent to the passage of the property in the goods, or upon performance or tender of performance of any other promise for the breach of which the goods were retaken, and upon payment of the expenses of retaking, keeping and storage, may redeem the goods and become entitled to take possession of them and to continue in the performance of the contract as if no default had occurred. Upon written demand **delivered personally or by registered mail** by the buyer, the seller shall furnish to the buyer a written statement of the sum due under the contract and the expenses of retaking, keeping and storage. For failure to furnish such statement within a reasonable time after demand, the seller shall forfeit to the buyer ($10), and also be liable to him for **all** damages [actually] suffered because of such failure. If the goods are perishable so that retention for ten days as herein prescribed would result in their destruction or substantial injury, the provisions of this section shall not apply, and the seller may resell the goods immediately upon their retaking. The provision of this section requiring the retention of the goods within the state during the period allowed for redemption shall not apply to the goods described in Section 7.

NOTES TO SECTION 17.

The idea of the draftsman in preparing the following sections has been that a conditional sale is practically equivalent to a chattel mortgage, and that the rights of buyer and seller in the conditional sale ought to coincide with those of chattel mortgagor and mortgagee as nearly as possible. Hence the buyer is given the right of redemption after default. It seems but little hardship on the seller to compel him to retain the goods within reach of the buyer for 30 days and allow the buyer to redeem the goods, if he can raise the money. In 30 days there should be opportunity to borrow the money, or to obtain it through the receipt of a monthly salary or wage. It is essential that the buyer should be able to discover just how much is claimed to be due on the contract and as a result of the retaking. The seller should furnish a written statement of this. The fixing of a small penalty for failure to deliver such a statement may stimulate promptness on the part of the seller.

In Maine, Massachusetts, Nebraska, New York, Pennsylvania, Vermont, Wisconsin, New Brunswick, Ontario, Prince Edward Island, and Saskatchewan the statutes expressly provide for redemption by the buyer,

the period of redemption varying from 15 days to 40 days. In some states in the absence of statute the courts have allowed the buyer the right of redemption. Miller *vs.* Steen, 30 Cal. 407; Liver *vs.* Mills, 101 Pac. (Cal.) 299; Puffer *vs.* Lucas, 112 N. C. 377.

SUPPLEMENTAL NOTE.—This was Section 14 of the first draft. The seller is required to keep the goods within the state only during the period of redemption. Retention within the buyer's filing district is more expensive than retention at the seller's warehouse or store. Unnecessary storage charges can be avoided by allowing the seller to take the goods to his own store or warehouse within the state, and the buyer will have equal opportunity to redeem.

Section 18. (Compulsory Resale by Seller.) If the buyer does not redeem the goods within ten days after the seller has retaken possession, and the buyer has paid **at least** fifty per cent [or more] of the purchase price at the time of the retaking, the seller shall sell them at public auction in the state where they were at the time of the retaking, such sale to be held not more than thirty days after the retaking. The seller shall give to the buyer not less than ten days' written notice of the sale, either personally or by registered mail in a postpaid envelope directed to the buyer at his last known place of **business or** residence. The seller shall also give notice of the sale by at least three notices posted in different public places within the filing district where the goods are to be sold, at least five days before the sale. If at the time of the retaking $500 or more had been paid on the purchase price, the seller shall also give notice of the sale at least five days before the sale by publication in a newspaper **published or having a general circulation** [printed] within the filing district where the goods are to be sold. The seller may bid for the goods at the resale. If the goods are of the kind described in Section 7, **the parties may fix in the conditional sale contract the place where the goods shall be resold** [they may be sold at any place, within the time, in the manner and upon the notice prescribed in this section].

NOTES TO SECTION 18.

In many states the buyer, upon default, forfeits the part payments already made, if the seller retakes the goods. Bray *vs.* Lowery, 163 Cal. 256; Herbert *vs.* Rhodes-Burford Furniture Co., 106 Ill. App. 583; Fleck *vs.* Warner, 25 Kans. 492; Lorain Steel Co. *vs.* Norfolk, 187 Mass. 500; Thrilby *vs.* Rainbow, 93 Mich. 164; C. W. Raymond Co. *vs.* Kahn, 124 Minn. 426; Duke *vs.* Shackleford, 53 Miss. 552; Richards *vs.* Hellen, 133 N. W. (Iowa) 393; Stearns *vs.* Drake, 24 R. I. 272. But in several of

these cases the holding was merely that the seller need not return the part payments before bringing replevin for the goods, and the court hinted that the buyer might later recover his part payments, less a reasonable reduction for the use of and damage to the goods. In other cases it has been held that the buyer is entitled to have his part payments, less rent and damage charges, returned to him when the buyer retakes the goods. Hill *vs.* Townsend, 69 Ala. 286; Commercial Pub'y. Co. *vs.* Campbell Printing-Press Co., 111 Ga. 388; Quality Clothes Shop *vs.* Keeney, 106 N. E. (Ind.) 541; Shafer *vs.* Russell, 28 Utah 444. The tendency of the courts is to avoid the old hard and fast rule that the buyer forfeited his part payments on default. The courts recognize the equity of the buyer in the goods on account of his part payments. In some states they have had to resort to indirect methods of giving the buyer the benefit of this equity. In other states they have felt bound by the old strict rule of forfeiture. It seems desirable to do away with this doubt and indirection and to admit clearly the right of the buyer to have the benefit of his part payments after default.

In a few states statutory schemes for relieving the buyer of the hardship of forfeiture have been provided. These may be divided into three classes. There are first the states which provide that the seller may not retake the goods for default, unless he returns to the buyer the part payments, less a reasonable amount for the use of the property and damage to it. Such systems prevail in Missouri and Ohio. In Missouri the right to the return of part payments on retaking exists in all cases. In Ohio only when the buyer has paid an amount in excess of twenty-five per cent of the purchase price must the seller return part payments on retaking. This scheme is open to the objection that it is difficult to determine what the value of the use of the goods has been and whether they have been damaged or not. The seller is apt to impose on the buyer and retain too much of the part payments under a claim of rent and alleged damage to the goods.

In Massachusetts and Pennsylvania the right to have a resale is optional with the buyer. In Massachusetts, where seventy-five per cent or more of the price has been paid, the buyer may demand a resale, and will be entitled to the surplus in the hands of the seller after the payment of the full price and expenses. This statute applies only to furniture and other household effects. In Pennsylvania the statute respecting the conditional sale of chattels to be attached to real property provides that the buyer may, within 10 days after the retaking, demand a resale of the property and shall be entitled to any surplus in the hands of the seller after the satisfaction of the price and expenses. In Vermont the seller may resell the goods, and if he does so, the buyer shall be entitled to the surplus thus created. The option in Vermont is with the seller.

In a third class of states resale is compulsory. These states are New York and Tennessee. In these states the seller is obliged, after retaking the goods, to resell them and return to the buyer the excess in his hands after the payment of the price and the expenses of resale. This compulsory resale insures the return of all part payments equitably due him. If he has contracted for goods at a price of $100 and has paid $75 at the time of default and retaking, and the goods on the compulsory resale bring but $25, the buyer is entitled to no return of part payments. The use he has had of the property has evidently been worth $75, for the goods have become so worn and damaged that they will bring only $25. But if, in the case supposed, the goods bring $50 on the resale, it is evident that the buyer ought to have returned to him $25, less the expense of resale. If such return is not made, the seller will have received $25 unjustly and the buyer will have been mulcted in that amount because of his default.

This latter system, namely, that of compulsory resale, is the one adopted in the proposed statute. It is believed to be better than the optional resale plan adopted in Massachusetts and Pennsylvania, because it works automatically. Many buyers of goods on conditional sale contracts are men of small means, little versed in the law and unfamiliar with correct business methods. They will not, it is believed, be apt to take advantage of an optional resale provision. They will not ordinarily know of it. It may be said that, if they are careless with respect to their own rights, they do not deserve protection. But the answer is that they frequently will not know what their own rights are, that they are a class of buyers who are frequently very needy and ignorant.

In New York the resale must take place within 60 days after the retaking of the goods. This seems a needlessly long period. It is believed that, if the buyer does not redeem the goods, the seller should be allowed to dispose of the matter by resale as soon as he can do so with due regard to a protection of the buyer's rights. Fifteen days after the period of redemption has expired seems long enough in which to advertise the resale. In Tennessee the seller must advertise the property for resale within 10 days after the retaking.

The length of notice of the resale which the seller must give varies in the different states. In Massachusetts the requirement is three days' newspaper notice; in New York 15 days' notice to the buyer is required; in North Carolina 10 days' notice to the buyer and 20 days' public notice by posting; in Tennessee 10 days' notice to the public by three posted notices; in Vermont 10 days' notice to the buyer and 10 days' notice to the public by two posted notices.

The notices required by the proposed Section 15 are believed to be reasonable and to give the buyer and the public sufficient time to prepare to attend the sale ready to bid, if they desire to do so.

In New Brunswick, Ontario, and Prince Edward Island five days' personal notice to the buyer or seven days' written notice is required. In Saskatchewan the buyer is entitled to eight days' personal notice of the resale or 10 days' written notice. The resale in these Canadian provinces is optional with the seller and not for the purpose of awarding the buyer the surplus after the payment of the price and expenses.

SUPPLEMENTAL NOTE.—This was Section 15 in the first draft. A compulsory resale in now provided for only where the buyer has paid a considerable portion of the purchase price, namely, fifty per cent. If he has paid less, statistics show that nothing is realized for the buyer on a resale. The depreciation of the goods more than eats up the buyer's equity. Where there is no chance of benefiting the buyer, a compulsory resale is a useless and expensive formality. If the buyer wants a resale for the purpose of estimating the equity, the buyer may demand it, even though he has paid only ten per cent of the price. But it seems undesirable to require such resale as a matter of law in cases where business experience shows that it can do no good.

SECOND SUPPLEMENTARY NOTE.—The last sentence of this section has been changed to give greater liberty to the parties in the case of the resale of railroad equipment.

Section 19. (Resale at Option of Parties [the buyer.]) If the buyer has not paid at least fifty per cent of the purchase price at the time of the retaking, the seller shall not be under a duty to resell the goods as prescribed in Section 18, unless the buyer serves upon the seller, within ten days after the re-

taking, a written notice **delivered personally or by registered mail** demanding a resale. If such notice is served, the resale shall [must] take place within thirty days after the service [of such notice], in the manner, at the place and upon the notice prescribed in Section 18. **The seller may voluntarily resell the goods on behalf of the buyer on compliance with the same requirements.**

NOTES TO SECTION 19.

This section was not in the original draft. It is inserted between old Section 15 and new Section 20.

As explained in the notes to Section 18, a resale where less than fifty per cent of the price has been paid has been shown to be a useless, expensive formality, not productive of any good to buyer or seller. Nevertheless, if the buyer desires to have a resale when he has paid less than fifty per cent of the price, he ought to have the right to demand a resale. This section gives him such right but does not make the resale compulsory where less than fifty per cent has been paid.

**Section 20. (Rights of Parties Where There is no Resale.) Where there is no resale, the seller may retain the goods as his own property without obligation to account to the buyer except as provided in Section 24, and the buyer shall be discharged of all obligation.**

[Section 18. (Disposition of Goods Where there is no Resale.) If the buyer has not paid at least fifty per cent of the purchase price at the time of the retaking, and does not demand a resale of the goods according to the provisions of Section 17, the seller may retain the goods as his own property, subject only to an obligation to account to the buyer for the surplus, if any, left after adding to the part payments made the value of the goods at the time of the retaking and subtracting therefrom the balance due upon the purchase price, with interest, plus the expenses of retaking.]

NOTES TO SECTION 20.

This section was not in the original draft. It was made necessary by Sections 18 and 19. Its purpose is to give the buyer the benefit of the value of the goods retaken, even if there is no resale.

SUPPLEMENTARY NOTE.—This section has been recast and much shortened. Its meaning has not been changed except that it frees the seller from all obligations where the law is complied with and there is no resale. In such cases the equity of the buyer is probably practically worthless and it has seemed best to wipe out the transaction and clear the slate of all obligations on both sides.

Section 21. (Proceeds of Resale.) The proceeds of the resale shall be applied (1) to the payment of the expenses thereof, (2) to the payment of the expenses of retaking, keeping and storing the goods, (3) to the satisfaction of the balance due on the purchase price. Any sum remaining after the satisfaction of such claims shall be paid to the buyer.

NOTES TO SECTION 21.

The provisions of this section are supported by the statutes of Massachusetts, New York, Pennsylvania, Tennessee and Vermont, the only statutes in which resale as a means of estimating the amount to be returned to the buyer is recognized. That the buyer should have the surplus, which represents his equity in the goods, is in accord with the chattel mortgage theory of the conditional sale.

SUPPLEMENTAL NOTE.—This was Section 16 in the first draft.

Section 22. (Deficiency on Resale.) If the proceeds of the resale are not sufficient to defray the expenses thereof, and also the expenses of retaking, keeping and storing the goods and the balance due upon the purchase price, the seller may recover the deficiency from the buyer, or from anyone who has succeeded to the obligations of the buyer.

NOTES TO SECTION 22.

This section follows out the mortgage theory. The chattel mortgagee can, of course, recover any deficiency after foreclosing his mortgage. The result produced by this section has been reached in a number of cases. Matteson *vs.* Equitable Min. & Mill Co., 143 Cal. 436; Kinney *vs.* Avery & Co., 80 S. E. (Ga.) 663; Christie *vs.* Scott, 94 Pac. (Kans.) 214; Dederick *vs.* Wolfe, 68 Miss. 500; McCormick Mach. Co. *vs.* Koch, 8 Okla. 374; Ascue *vs.* C. Aultman & Co., 2 Willson (Tex.), Sec. 947. While an action for the entire price due has often been considered inconsistent with a retaking of the goods, a retaking of the goods ought not to be considered as an election to trust to the goods alone for the recovery of the price. The retaking constitutes an election to look to the security given by the buyer for the payment of t' e price. After resort to that primary source of payment the seller ought to be allowed to proceed to the secondary source, the promise of the buyer to pay. If the buyer is given a right to recover the surplus on the resale, the seller must be allowed to recover his full purchase price.

SUPPLEMENTARY NOTE.—This was Section 17 of the first draft. In view of the criticism of this section by some of the Commissioners upon the first reading of the act, it seems wise to add a full statement of the condition of the law on the subject and the reasons for including Section 22 in the act.

*The Authorities.*—It is submitted that the objection to this section from the point of view of authority is based on a misconception. Many cases, it is true, have held that the conditional seller cannot, after retaking the goods, recover any part of the price from the buyer. See notes to Section 23. But these cases were decided under a theory of conditional

sales entirely different from that proposed in the act. The theory under which these cases were decided was that the retaking was a rescission of the contract, that all obligations under the contract were discharged by such act of retaking, that the consideration for the buyer's promise to pay the purchase price had failed. The seller, under this theory, kept the goods as his own. He had no duty to resell the goods for the benefit of the buyer.

On the other hand, under the proposed act the theory of retaking is wholly different. It is not a theory of rescinding the contract, but of foreclosing a mortgage. The right to retake is a right to enforce a security which the seller reserved to compel the performance of the promise to pay the purchase price. The result of the retaking is not, as it was at common law or under the old statutes, to leave the seller in possession and ownership of the goods. The seller must, under the act, after retaking the goods, resell them, as a chattel mortgagee would foreclose a mortgage. The ultimate result of retaking under the act is that the seller loses the goods, and is left with the resale price and the part payments of the original buyer in his hands. It is elementary justice that the seller, who has parted with his goods, should have the contract price of them. If the resale price plus the part payments previously made does not equal the contract price, the buyer should pay the deficiency.

The fallacy in arguing that by the weight of common law authority there is no right to recover a deficiency judgment, and that there ought, therefore, to be no right to a deficiency judgment under the act, is that at common law the seller ended up after the retaking with the goods in his possession and absolutely his property. Of course, he cannot have both the goods and the price. But under the proposed act the seller loses the goods by a compulsory resale and has in his possession only the resale price and the previously made part payments.

The only decisions under the common law and the old statutes which ought to be of weight with the Conference on this subject are those where the chattel mortgage theory of a conditional sale was applied. Examples of these cases are cited in the original notes to this section. They all sustain the provisions of the proposed act. So also do the provisions of the two statutes which now provide for a compulsory resale after retaking, namely, the statutes of New York and Tennessee. N. Y. Pers. Prop. Law, Sec. 67; Code of Tenn., Sec. 3668.

The holding in the cases relied upon by the opponents of this section can properly be summarized as follows: "A conditional seller who retakes the goods *and retains them as his own* may not thereafter recover the purchase price from the buyer." The proposed provision of the act is not, as some opponents of this section would have suggested, the opposite of this holding. It is, on the other hand, properly condensed as follows: "A conditional seller who retakes the goods *and resells them and applies the resale price on the purchase price* may recover from the buyer any balance still due."

No attempt is being made in Section 22 to work a revolution in the existing law or to go against the great weight of authority in the United States. On the other hand, Section 22 states the existing law as it has been adjudicated in all cases where the exact question involved has arisen. Where the chattel mortgage theory of the conditional sale has been adopted, the deficiency judgment has followed as a matter of course. And the chattel mortgage theory of the conditional sale is increasingly receiving the approval of the courts, of legislatures and of legal writers.

*Practical Operation of the Section.*—The justice of Section 22 can best be determined by putting a concrete case, and observing how the act would work. Let us suppose the following facts: On Jan. 1, 1917, a piano is delivered under a conditional sale contract; price $400; terms

$50 down and $10 a month until full price is paid; buyer pays $50 on delivery and $10 on Feb. 1 and $10 on March 1; buyer defaults in $10 payment due April 1; piano is retaken by seller on April 11; resale occurs under the act after due advertisement, on May 23, on resale of piano brings $300; costs of resale are $10. The result of the transaction is that the seller has parted with a $400 piano and now has in his hands $370, namely, $70 part payments from the buyer and $300 as the resale price; the seller has also incurred $10 expense on account of the resale. The buyer has had 3 1-2 months use of the piano and has paid $70. Under the act the account would be reckoned as follows:

| | |
|---|---|
| The buyer is charged with $400 plus $10 | $410 |
| The buyer is credited with $70 plus $300 | 370 |
| The buyer is liable for the deficiency, namely | 40 |

The result is fair from the point of view of the seller because he has parted with a $400 piano and should receive its value. The buyer has no justifiable complaint because the difference between the original and the resale price of the piano represents the value of the use of the piano which the buyer has had for 3½ months, that is, the rent and the wear and tear on the piano. The deficiency judgment shows that the piano has deteriorated in value due to the buyer's use, to an amount greater than the part payments made by the buyer.

If a deficiency judgment were not allowed in the case supposed, the seller would have parted with a $400 piano and have received only $370 and would have no further remedy. This would not be equitable. The buyer would have had $100 worth of use of the piano and would have been liable for $70 only. This also is unfair. No account has been taken of the resale expense, for which the buyer obviously should respond, since his own breach of contract caused such expense.

Section 23. (Election of Remedies.) **After** the retaking of possession as provided in Section 15 [shall be deemed an election by the seller to rescind the conditional sale, and] the buyer shall [not] be liable [thereafter] for the price **only after a resale and only to the extent** [except as] provided in Section 22. Neither the bringing of an action by the seller for the recovery of the whole or any part of the price, nor the recovery of judgment in such action, nor the collection of a portion of the price, shall be deemed inconsistent with a later retaking of the goods as provided in Section 15. But such right of retaking shall not be exercised by the seller after he has collected the entire price, or after he has claimed a lien upon the goods, or attached them, or levied upon them as the goods of the buyer.

NOTES TO SECTION 23.

It is generally agreed that the retaking of the goods by the seller constitutes an election which prevents him from later suing for the purchase price. Nashville Lumber Co. *vs.* Robinson, 121 S. W. (Ark.) 350; Muncy *vs.* Brain, 110 Pac. (Cal.)945; Manson *vs.* Dayton, 153 Fed. 258; Turk

*vs.* Carnahan, 25 Ind. App. 125; Perkins *vs.* Grobben, 116 Mich. 172; A. F. Chase & Co. *vs.* Kelly, 146 N. W. (Minn.) 1113; Madison Live Stock Co. *vs.* Osler, 39 Mont. 244; Nelson *vs.* Gibson, 143 App. Div. (N. Y.) 894; Kelley Co. *vs.* Schlimme, 220 Pa. 413; Stewart & Holmes Drug Co. *vs.* Ross, 74 Wash. 401. This seems correct, because the act of retaking amounts in practically all cases to a rescission of the contract. The buyer ought not thereafter to be liable for the price, unless the security which he has given for the payment of the price, the goods themselves, proves insufficient to compensate the seller. In Section 22 the seller is allowed to recover the deficiency after a resale. If he retakes the property, he is deemed to have elected to look to the goods as his primary security. If that should fail, he may have the secondary remedy of recovering the deficiency from the buyer. But a concurrent suit for the entire price does not seem justifiable. There are a few instances in which the retaking of goods has been held not to amount to a rescission of the contract, but merely to constitute a taking of the goods as agent for the buyer and for the better security of the seller. These cases are very rare and their correctness questionable. The practical construction put upon a retaking by the parties is that the contract is thereafter off.

It seems obvious that action for a single installment of the price not the final installment, does not amount to an election to treat the buyer as the owner of the goods. The buyer is not, according to the most essential term of the contract, to become the owner until he has paid the price. The recovery of a single installment is perfectly consistent with the payment of the further installments by the buyer and the complete performance of the contract. The recovery of such installments ought not, therefore, to preclude the seller from retaking the goods later, in case of default. Haynes *vs.* Temple, 198 Mass. 372.

Upon the question of the effect of bringing an action for the entire balance of the price due, the authorities are not harmonious. The prevailing view is that the commencement of an action for the entire price prevents a retaking of the goods at a later time. Butler *vs.* Dodson & Son, 78 Ark. 569; Waltz *vs.* Silveira, 25 Cal. App. 717; North Robinson Dean Co. *vs.* Strong, 25 Idaho 721; Smith *vs.* Barber, 153 Ind. 322; Richards *vs.* Schreiber, 98 Iowa 422; Bailey *vs.* Hervey, 135 Mass. 172; Alden *vs.* Dyer, 92 Minn. 134; Frederickson *vs.* Schmittroth, 112 N. W. (Neb.) 564; Orcutt *vs.* Rickenbrodt, 42 App. Div. (N. Y.) 238; Dowagiac Mfg. Co. *vs.* Mahon, 13 N. D. 516; Sioux Falls Adjustment Co. *vs.* Aikens, 142 N. W. (S. D.) 651; Winton Motor Carriage Co. *vs.* Broadway Automobile Co., 118 Pac. (Wash.) 817. The contrary view has been maintained in E. E. Forbes Piano Co. *vs.* Wilson, 144 Ala. 586; Jones *vs.* Snider, 99 Ga. 276; Foster *vs.* Briggs Co., 98 S. W. (Ind. Terr.) 120; Westinghouse Co. *vs.* Auburn Co., 76 Atl. (Me.) 897; Campbell Mfg. Co. *vs.* Rockaway Pub. Co., 56 N. J. L. 676. The latter view is adopted in the proposed uniform act. In support of the former view it may be said that the only theory on which the seller can demand the full price is that the buyer has become the owner of the goods. That is the express stipulation of the contract, that passage of property and payment of the price are to be concurrent. When the seller, by bringing an action for the price, affirms that the price is due, he must accept the logical consequent, namely, that the goods belong to the buyer.

But the minority view and the one adopted in Section 23 seem more reasonable and in accord with the chattel mortgage theory of a conditional sale. If an action for the price bars a later retaking of the goods, the seller will never dare to sue for the price and run the risk of getting a worthless judgment and losing his claim upon the goods. Just as an action for the chattel mortgage debt does not bar the foreclosure of the chattel mortgage at a later time, so an action for the purchase price under a conditional sale should not bar a later reliance on the reservation of the property in the goods as security.

SUPPLEMENTAL NOTE.—Section 19 of the first draft. This section has been somewhat expanded to provide for all possible questionable cases.

SECOND SUPPLEMENTARY NOTE.—The first sentence of this section has been slightly changed with a view to compelling the seller to resort to a resale before suing the buyer for any portion of the price. The phrase with respect to rescission has been dropped since it did not seem to describe the transaction with technical accuracy, for after the transaction called a rescission the buyer was still liable to the seller in certain cases.

Section 24. (Recovery of Part Payments.) If the seller fails to comply with the provisions of Sections 17, 18, 19, 20 and 21 after retaking the goods, the buyer may recover from the seller his actual damages, if any, and in no event less than one fourth of the sum of all payments which have been made under the contract, with interest.

NOTES TO SECTION 24.

In the two states which have a compulsory resale provision, namely, New York and Tennessee, the penalty for failure to carry out the resale provisions according to law is that the buyer may recover his part payments. Some penalty is necessary in order to insure that the resale will take place. This penalty seems fair. If the seller keeps the goods and neglects the resale provision, it probably means that the goods are not worn or damaged to any great extent and that their value is practically the same as when the conditional sale was made. It would be unjust to allow the seller to keep these undamaged goods and also retain the part payments of the buyer. The buyer's equity should be protected either by a resale or by a return of his part payments.

In Massachusetts, where the buyer may in some cases demand a resale, the penalty for failure to resell is that the right of redemption on the part of the buyer is not foreclosed. In Pennsylvania, where a similar right on the buyer's part to demand a resale exists, there seems to be no penalty for failure to resell after demand.

SUPPLEMENTAL NOTE.—Section 20 of the first draft.

Section 25. (Waiver of Statutory Protection.) No act or agreement of the buyer **before or** at the time of the making of the contract, nor any agreement or statement by the buyer in such contract, shall constitute a valid waiver of the provisions of Sections 17, 18, 19, 20 and 21.

NOTES TO SECTION 25.

This section is supported by decisions in three of the states having resale and redemption provisions for the benefit of the buyer. Desseau *vs.* Holmes, 187 Mass. 486; Drake *vs.* Metropolitan Mfg. Co., 218 Mass. 112; Crowe *vs.* Liquid Carbonic Co., 208 N. Y. 396; Massillon Engine & Thresher Co. *vs.* Wilkes, 82 S. W. (Tenn.) 316. In the absence of such a provision unscrupulous sellers would do away with the effect of the statute by waivers printed in small type in the contract. No act should

constitute a waiver unless performed after the contract of conditional sale is complete. It seems desirable to provide against waivers outside the contract, but at the time of the making of the contract. Such a waiver, by means of a separate receipt, was attempted in Desseau *vs.* Holmes, *supra.*

SUPPLMENTAL NOTE.—Section 21 of the first draft.

SECOND SUPPLEMENTARY NOTE.—The addition of the words "before or" in this section prevents any waiver of the provisions of the act for the protection of the buyer either at the time of or before the making of the contract. They are deemed necessary to prevent evasion of the act.

Section 26. (Loss and Increase.) After the delivery of the goods to the buyer and prior to the retaking of them by the seller, the risk of injury and loss shall rest upon the buyer. The increase of goods sold under a conditional sale shall be subject to the same conditions as the original goods.

NOTES TO SECTION 26.

The rule with respect to risk of loss is that adopted by the Uniform Sales Act and by a great majority of the states. Uniform Sales Act, Sec. 22; Blue *vs.* American Soda Fountain Co., 43 So. (Ala.) 709; Hollenberg Music Co. *vs.* Barron, 140 S. W. (Ark.) 582; O'Neil-Adams Co. *vs.* Eklund, 89 Conn. 232; Phenix Ins. Co. *vs.* Hilliard, 52 So. (Fla.) 799; Jessup *vs.* Fairbanks, Morse & Co., 78 N. E. (Ind.) 1050; Burnley *vs.* Tufts, 66 Miss. 48; Tufts *vs.* Wynne, 45 Mo. App. 42; Charles A. Stickney Co. *vs.* Nicholas, 152 N. W. (Neb.) 554; Collerd *vs.* Tully, 78 N. J. Eq. 557; Nat. Cash Reg. Co. *vs.* South Bay Club House Ass'n, 64 Misc. (N. Y.) 125; Whitlock *vs.* Auburn Lumber Co., 145 N. C. 120; Harley *vs.* Stanley, 105 Pac. (Okla.) 188; Carolina, etc., Co. *vs.* Unaka Springs Lumber Co., 130 Tenn. 354; Lavalley *vs.* Ravenna, 78 Vt. 152; Exposition Arcade Corp. *vs.* Lit Bros., 75 S. E. (Va.) 117. It seems desirable to insert this section in the Uniform Conditional Sales Act, although there may be a duplication of legislation in states where the Uniform Sales Act is already in force. The Uniform Sales Act does not expressly refer to conditional sales, but only to sales where the title is reserved as security for the payment of the price. Furthermore, states which have not adopted the Uniform Sales Act may adopt the Uniform Conditional Sales Act.

It is well established that the increase of goods sold under a conditional sale remain the property of the seller until the performance of the condition and then pass to the buyer with the original goods. Anderson *vs.* Leverette, 116 Ga. 732; Allen *vs.* Delano, 55 Me. 113; Desany *vs.* Thorp, 70 Vt. 31.

SUPPLEMENTAL NOTE.—Section 23 of the first draft.

Section 27. (Act Prospective Only.) This act shall not apply to conditional sales made prior to the time when it takes effect.

Section 28. (Rules for Cases not Provided for.) In any case not provided for in this act the rules of law and equity, including the law merchant, and in particular those relating to principal and agent and to the effect of fraud, misrepresentation, duress or coercion, mistake, bankruptcy, or other invalidating cause, shall continue to apply to conditional sales.

NOTES TO SECTION 28.

This section is modeled after Sec. 73 of the Uniform Sales Act and is inserted for the sake of completeness and clarity.

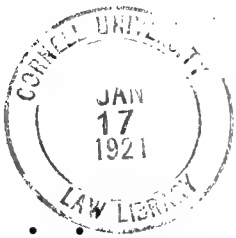
Section 29. (Uniformity of Interpretation.) This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

Section 30. (Title of Act.) This act may be cited as the Uniform Conditional Sales Act.

Section 31. (Inconsistent Laws Repealed.) (Here repeal all existing acts in the field of conditional sales.) But the laws repealed by this section shall apply to all conditional sales made prior to the time when this act takes effect.

Section 32. (Time of Taking Effect.) This act shall take effect.....

# UNIFORM CONDITIONAL SALES ACT




Drafted by the

## National Conference of Commissioners on Uniform State Laws

and by it

## Approved and Recommended for Enactment In All the States

at its

CONFERENCE AT CLEVELAND, OHIO

August 22-27, 1918

(Edition of 1920. 1M.)

## THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

The National Conference of Commissioners on Uniform State Laws is composed of Commissioners appointed by Legislative or Executive authority from the States, the District of Columbia, the territory of Alaska, and the Island Possessions of the United States. The organization meeting was held at Saratoga, New York, in August, 1892; and annual meetings have been regularly held since that time, immediately preceding the meetings of the American Bar Association.

The purpose of the organization, as its name imports, is to promote uniformity of legislation on subjects of common interest throughout the United States. The Commissioners are chosen from the legal profession, and serve without compensation or emoluments of any sort. Many of them have for years paid their own expenses, and all of them have rendered unstinting services for the public welfare. There is nothing of a personal or private nature about any of the aims or objects of the National Conference. Proposed acts are carefully drawn by special committees of trained lawyers, assisted by experts in many instances, and are printed, distributed and discussed in the National Conference at more than one annual session. When finally approved by the Conference, the Uniform Acts are recommended for general adoption throughout the jurisdiction of the United States and are submitted to the American Bar Association for its approval. Each uniform act is thus the fruit of one or more tentative drafts submitted to the criticism, correction and emendation of the Commissioners, and represents the experience and the judgment of a select body of lawyers chosen from every part of the United States.

The Uniform Negotiable Instruments Act, one of the earlier productions of the National Conference, has now been adopted in 50 out of the 53 jurisdictions of the United States, and other Uniform Acts are being generally adopted.

National Conference of Commissioners on Uniform State Laws.
By its Executive Committee.

Eugene A. Gilmore, Secretary,
University of Wisconsin,
Madison, Wisconsin.

## COMMITTEE ON COMMERCIAL LAW OF THE COMMISSIONERS ON UNIFORM STATE LAWS—1919–1920

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WILLIAM A. BLOUNT,
President of the Conference (*ex officio*)

## RESOLUTION

adopted by the National Conference of Commissioners on Uniform State Laws at Cleveland, Ohio, August 26, 1918:

"Resolved, By the National Conference of Commissioners on Uniform State Laws that the third tentative draft of an Act Concerning Conditional Sales and to Make Uniform the Law Relating Thereto, be and the same is hereby approved, and that the same be submitted to the legislatures of the different states, the Territory of Alaska, the District of Columbia, and the Insular Possessions of the United States for enactment at their next session."

A true copy.
Attest:
Eugene A. Gilmore, Secretary,
University of Wisconsin,
Madison, Wisconsin.

## EXPLANATORY NOTE

The unsatisfactory nature of the law governing conditional sales of chattel property has often been the subject of comment. The fact that the buyer is immediately intrusted with possession of the property and the power to use it as if it were his own, offers easy opportunity for defrauding both the buyer's creditors and subpurchasers from him. An attempt has been made in most of the United States, but by no means in all of them, to guard against this difficulty by enacting statutes which make record or filing of the conditional sale contract a condition of its validity against innocent third persons. These statutes, however, are by no means uniform in their requirements and subject a conditional seller of goods who sells goods all over the country (and there are many manufacturers who dispose of their products in this way) to great inconvenience in discovering and complying with the different statutory regulations. Moreover, the law governing the subject has further defects. Most courts have failed to recognize fully that a conditional sale is in its essence similar to a chattel mortgage; the seller's title being retained merely for the purpose of security, and the buyer acquiring from the outset not merely an executory contractual right, but a property interest in the goods. The result has been a great conflict of authority in regard to the rights of the parties. These circumstances in connection with the magnitude of the business carried on by means of conditional sales (the annual inter-state business alone being estimated at nearly half a billion of dollars) make the subject a most important one for regulation by a uniform statute in the several states. Moved by these considerations, the Conference of Commissioners on Uniform State Laws at its meeting at Salt Lake City in August 1915, directed its Committee on Commercial Law to prepare an Act to make uniform the law on the subject and to employ a draftsman for that purpose. In accordance with these directions the Committee employed Professor George G.

Bogert of Cornell University to draft such a law. A first tentative draft was prepared by him, and, after criticism and consideration by the Committee on Commercial Law, was submitted to the Conference at its meeting in August 1916, at Chicago, when it was examined and discussed with the assistance of the draftsman, section by section, and a number of amendments were tentatively adopted. Soon thereafter, in accordance with instructions given by the Conference, the draftsman presented a second tentative draft to the Committee on Commercial Law, which was carefully considered and discussed by the Committee and with the changes made after this discussion was presented to the Conference at its meeting in August 1917 at Saratoga. The revised draft was again carefully discussed section by section with the aid of the draftsman, and with further amendments was again submitted to the Committee. A new tentative draft was prepared and was once more considered by the Committee. With the light gained by further discussion and conferences with lawyers and mercantile men whose business gave them expert knowledge of the subject, further amendments were made, and a third tentative draft submitted to the Conference at its meeting in Cleveland, August 1918. There the draft was, for the third time, carefully examined and discussed section by section by the Conference, and, with amendments then made, was finally adopted and recommended for passage.

During the whole or part of the time when the Act was in preparation the following Commissioners were members of the Committee on Commercial Law:

WALTER GEORGE SMITH, Philadelphia, Pa.;
NATHAN WILLIAM MACCHESNEY, Chicago, Ill.;
GEORGE WHITELOCK, (Deceased);
A. T. STOVALL, Okolona, Miss.;
SAMUEL WILLISTON, Cambridge, Mass.;
FRANCIS M. BURDICK, New York City, N. Y.;
SAMPSON R. CHILD, Minneapolis, Minn.;
EDWIN A. KRAUTHOFF, Washington, D. C.;
W. O. HART, New Orleans, La.

The Committee at its meetings had assistance from the

following gentlemen, each of whom represented important commercial interests:

HENRY S. BLUM, representing Chicago Ass'n of Credit Men, Inc.

G. L. YAPLE, of S. F. Bowser & Co., Inc., Fort Wayne, Ind.

G. K. PERRY, of Holcombe & Hoke Mfg. Co., Indianapolis, Ind.

FRANK H. BANDEL, Auto Car Co., Ardmore, Pa.

W. L. WHITE, of American Piano Manufacturers' Ass'n. and Bankers' Commercial Corporation, New York, N. Y.

E. ROSENTHAL, of Hobart Mfg., Troy, Ohio.

JOHN J. HINCHMAN, of Underwood Typewriter Co., Chicago, Ill.

F. L. WORDEN, of Burroughs Adding Machine Co., Detroit, Mich.

WILLIAM C. SCHWEBEL, of Philadelphia, Pa.

GRAHAM SUMNER, of Simpson, Thatcher & Bartlett, New York, N. Y.

B. E. PHILLIPS, Secy.-Treas., Phillips Company, Chicago, Ill.

D. M. VESEY, S. W. Bowser & Co., Fort Wayne, Ind.

J. T. WELCH, Moneyweight Scale Co., Chicago, Ill.

W. W. KERR, Cable Co., Chicago, Ill.

W. K. MCINTOSH, V. P. Liquid Carbonic Co., Chicago, Ill.

E. J. COHN, Secy.-Treas. Sherer Gillett Co., Chicago, Ill.

A. J. RUMPF, Studebaker Corporation, South Bend, Ind.

J. W. MOE, Bankers' Commercial Security Co., New York, N. Y.

M. L. PURVIN, Municipal Engineering & Contracting Co., Chicago, Ill.

# UNIFORM CONDITIONAL SALES ACT.

## CONTENTS

## AN ACT CONCERNING CONDITIONAL SALES AND TO MAKE UNIFORM THE LAW RELATING THERETO.

*Be it enacted by*

SECTION 1. [Definition of Terms.] In this Act "Conditional sale" means (1) any contract for the sale of goods under which possession is delivered to the buyer and the property in the goods is to vest in the buyer at a subsequent time upon the payment of part or all of the price, or upon the performance of any other condition or the happening of any contingency; or (2) any contract for the bailment or leasing of goods by which the bailee or lessee contracts to pay as compensation a sum substantially equivalent to the value of the goods, and by which it is agreed that the bailee or lessee is bound to become, or has the option of becoming the owner of such goods upon full compliance with the terms of the contract.

"Buyer" means the person who buys or hires the goods covered by the conditional sale, or any legal successor in interest of such person.

"Filing district" means the sub-division of the state in which conditional sale contracts, or copies thereof, are required by this act to be filed.

"Goods" means all chattels personal other than things in action and money, and includes emblements, industrial growing crops, and things attached to or forming a part of land which are agreed to be severed before sale or under the conditional sale.

"Performance of the condition" means the occurrence of the event upon which the property in the goods is to vest in the buyer, whether such event is the performance of an act by the buyer or the happening of a contingency.

"Person" includes an individual, partnership, corporation, and any other association.

"Purchase" includes mortgage and pledge.

"Purchaser" includes mortgagee and pledgee.

"Seller" means the person who sells or leases the goods covered by the conditional sale, or any legal successor in interest of such person.

For Notes and Annotations, see pages 20-35.

SECTION 2. [Primary Rights of Buyer.] The buyer shall have the right when not in default to retain possession of the goods, and he shall also have the right to acquire the property in the goods on the performance of the conditions of the contract. The seller shall be liable to the buyer for the breach of all promises and warranties, express or implied, made in the conditional sale contract, whether or not the property in the goods has passed to the buyer.

SECTION 3. [Primary Rights of Seller.] The buyer shall be liable to the seller for the purchase price, or for installments thereof, as the same shall become due, and for breach of all promises made by him in the conditional sale contract, whether or not the property in the goods has passed to the buyer.

SECTION 4. [Conditional Sales Valid Except as Otherwise Provided.] Every provision in a conditional sale reserving property in the seller after possession of the goods is delivered to the buyer, shall be valid as to all persons, except as hereinafter otherwise provided.

SECTION 5. [Conditional Sales Void as to Certain Persons.] Every provision in a conditional sale reserving property in the seller, shall be void as to any purchaser from or creditor of the buyer, who, without notice of such provision, purchases the goods or acquires by attachment or levy a lien upon them, before the contract or a copy thereof shall be filed as hereinafter provided, unless such contract or copy is so filed within ten days after the making of the conditional sale.

SECTION 6. [Place of Filing.] The conditional sale contract or copy shall be filed in the office
in [the city,] [county,] [registration district] in which the goods are first kept for use by the buyer after the sale. It shall not be necessary to the validity of such conditional sale contract, or in order to entitle it to be filed, that it be acknowledged or attested. This section shall not apply to the contracts described in Section 8.

SECTION 7. [Fixtures.] If the goods are so affixed to realty, at the time of a conditional sale or subsequently as to

become a part thereof and not to be severable wholly or in any portion without material injury to the freehold, the reservation of property as to any portion not so severable shall be void after the goods are so affixed, as against any person who has not expressly assented to the reservation. If the goods are so affixed to realty at the time of a conditional sale or subsequently as to become part thereof but to be severable without material injury to the freehold, the reservation of property shall be void after the goods are so affixed as against subsequent purchasers of the realty for value and without notice of the conditional seller's title, unless the conditional sale contract, or a copy thereof, together with a statement signed by the seller briefly describing the realty and stating that the goods are or are to be affixed thereto, shall be filed before such purchase in the office where a deed of the realty would be recorded or registered to affect such realty. As against the owner of realty the reservation of the property in goods by a conditional seller shall be void when such goods are to be so affixed to the realty as to become part thereof but to be severable without material injury to the freehold, unless the conditional sale contract, or a copy thereof, together with a statement signed by the seller briefly describing the realty and stating that the goods are to be affixed thereto, shall be filed before they are affixed, in the office where a deed would be recorded or registered to affect such realty.

SECTION 8. [Railroad Equipment or Rolling Stock.] No conditional sale of railroad, or street or interurban railway equipment or rolling stock shall be valid as against the purchasers and creditors described in Section 5, unless the contract shall be acknowledged by the buyer or attested in like manner as a deed of real property, and the contract, or a copy thereof, shall be filed or recorded in the office of ; and unless when any engine or car so sold is delivered there shall then be plainly and conspicuously marked upon each side thereof the name of the seller, followed by the word "owner."

SECTION 9. [Conditional Sale of Goods for Resale.] When goods are delivered under a conditional sale contract and

the seller expressly or impliedly consents that the buyer may resell them prior to performance of the condition, the reservation of property shall be void against purchasers from the buyer for value in the ordinary course of business, and as to them the buyer shall be deemed the owner of the goods, even though the contract or a copy thereof shall be filed according to the provisions of this act.

SECTION 10. [Filing.] The filing officer shall mark upon the contract or copy filed with him the day and hour of filing and shall file the contract or copy in his office for public inspection. He shall keep a separate book in which he shall enter the names of the seller and buyer, the date of the contract, the day and hour of filing, a brief description of goods, the price named in the contract and the date of cancellation thereof; except that in entering the contracts mentioned in Section 8 the shall record either the sum remaining to be paid upon the contract or the price of the goods. Such book shall be indexed under the names of both seller and buyer. For filing and entering such contract or copy the filing officer shall be entitled to a fee of [ten cents], except that for filing and entering a contract described in Section 8 the
shall be entitled to a fee of [one dollar].

SECTION 11. [Refiling.] The filing of conditional sale contracts provided for in Sections 5, 6 and 7 shall be valid for a period of three years only. The filing of the contract provided for by Section 8 shall be valid for a period of fifteen years only. The validity of the filing may in each case be extended for successive additional periods of one year from the date of refiling by filing in the proper filing district a copy of the original contract within thirty days next preceding the expiration of each period, with a statement attached signed by the seller, showing that the contract is in force and the amount remaining to be paid thereon. Such copy, with statement attached, shall be filed and entered in the same manner as a contract or copy filed and entered for the first time, and the filing officer shall be entitled to a like fee as upon the original filing.

SECTION 12. [Cancellation of Contract.] After the performance of the condition, upon written demand delivered personally or by registered mail by the buyer or any other person having an interest in the goods, the seller shall execute, acknowledge and deliver to the demandant a statement that the condition in the contract has been performed. If for ten days after such demand the seller fails to mail or deliver such a statement of satisfaction, he shall forfeit to the demandant five dollars [$5.00] and be liable for all damages suffered. Upon presentation of such statement of satisfaction the filing officer shall file the same and note the cancellation of the contract and the date thereof on the margin of the page where the contract has been entered. For filing and entering the statement of satisfaction the filing officer shall be entitled to a fee of [ten cents], except that the shall be entitled to a fee of [fifty cents] for filing and entering a statement of the satisfaction of a contract described in Section 8.

SECTION 13. [Prohibition of Removal or Sale Without Notice.] Unless the contract otherwise provides, the buyer may, without the consent of the seller, remove the goods from any filing district and sell, mortgage or otherwise dispose of his interest in them; but prior to the performance of the condition, no such buyer shall remove the goods from a filing district in which the contract or a copy thereof is filed, except for temporary uses for a period of not more than thirty days, unless the buyer not less than ten days before such removal shall give the seller personally or by registered mail written notice of the place to which the goods are to be removed and the approximate time of such intended removal; not prior to the performance of the condition shall the buyer sell, mortgage or otherwise dispose of his interest in the goods, unless he, or the person to whom he is about to sell, mortgage or otherwise dispose of the same, shall notify the seller in writing personally or by registered mail of the name and address of the person to whom his interest in the goods is about to be sold, mortgaged or otherwise transferred, not less than ten days before such sale, mortgage or other disposal. If any buyer

does so remove the goods, or does so sell, mortgage or otherwide dispose of his interest in them without such notice or in violation of the contract, the seller may retake possession of the goods and deal with them as in case of default in payment of part or all of the purchase price. The provisions of this section regarding the removal of goods shall not apply, however, to the goods described in Section 8.

SECTION 14. [Refiling on Removal.] When, prior to the performance of the condition, the goods are removed by the buyer from a filing district in this state to another filing district in this state in which such contract or a copy thereof is not filed, or are removed from another state into a filing district in this state where such contract or copy is not filed, the reservation of the property in the seller shall be void as to the purchasers and creditors described in Section 5, unless the conditional sale contract or a copy thereof shall be filed in the filing district to which the goods are removed, within ten days after the seller has received notice of the filing district to which the goods have been removed. The provisions of this section shall not apply, however, to the goods described in Section 8. The provisions of Section 11 regarding the duration of the validity of the filing and the necessity for refiling shall apply to contracts or copies which are filed in a filing district other than that where the goods are originally kept for use by the buyer after the sale.

SECTION 15. [Fraudulent Injury, Concealment, Removal or Sale.] When, prior to the performance of the condition, the buyer maliciously or with intent to defraud, shall injure, destroy or conceal the goods, or remove them to a filing district where the contract or a copy thereof is not filed, without having given the notice required by Section 13, or shall sell, mortgage, or otherwise dispose of such goods under claim of full ownership, he shall be guilty of a crime and upon conviction thereof shall be imprisoned [in the county jail] for not more than [one year] or be fined not more than [$500] or both.

SECTION 16. [Retaking Possession.] When the buyer shall be in default in the payment of any sum due under the

contract, or in the performance of any other condition which the contract requires him to perform in order to obtain the property in the goods, or in the performance of any promise the breach of which is by the contract expressly made a ground for the retaking of the goods, the seller may retake possession thereof. Unless the goods can be retaken without breach of the peace, they shall be retaken by legal process; but nothing herein shall be construed to authorize a violation of the criminal law.

SECTION 17. [Notice of Intention to Retake.] Not more than forty nor less than twenty days prior to the retaking, the seller, if he so desires, may serve upon the buyer personally or by registered mail a notice of intention to retake the goods on account of the buyer's default. The notice shall state the default and the period at the end of which the goods will be retaken, and shall briefly and clearly state what the buyer's rights under this act will be in case they are retaken. If the notice is so served and the buyer does not perform the obligations in which he has made default before the day set for retaking, the seller may retake the goods and hold them subject to the provisions of Sections 19, 20, 21, 22 and 23 regarding resale, but without any right of redemption.

SECTION 18. [Redemption.] If the seller does not give the notice of intention to retake described in Section 17, he shall retain the goods for ten days after the retaking within the state in which they were located when retaken, during which period the buyer, upon payment or tender of the amount due under the contract at the time of retaking and interest, or upon performance or tender of performance of such other condition as may be named in the contract as precedent to the passage of the property in the goods, or upon performance or tender of performance of any other promise for the breach of which the goods were retaken, and upon payment of the expenses of retaking, keeping and storage, may redeem the goods and become entitled to take possession of them and to continue in the performance of the contract as if no default had occurred. Upon written demand delivered personally or

by registered mail by the buyer, the seller shall furnish to the buyer a written statement of the sum due under the contract and the expense of retaking, keeping and storage. For failure to furnish such statement within a reasonable time after demand, the seller shall forfeit to the buyer [$10] and also be liable to him for all damages suffered because of such failure. If the goods are perishable so that retention for ten days as herein prescribed would result in their destruction or substantial injury, the provisions of this section shall not apply, and the seller may resell the goods immediately upon their retaking. The provision of this section requiring the retention of the goods within the state during the period allowed for redemption shall not apply to the goods described in Section 8.

SECTION 19. [Compulsory Resale by Seller.] If the buyer does not redeem the goods within ten days after the seller has retaken possession, and the buyer has paid at least fifty per cent of the purchase price at the time of the retaking, the seller shall sell them at public auction in the state where they were at the time of the retaking, such sale to be held not more than thirty days after the retaking The seller shall give to the buyer not less than ten days' written notice of the sale, either personally or by registered mail, directed to the buyer at his last known place of business or residence. The seller shall also give notice of the sale by at least three notices posted in different public places within the filing district where the goods are to be sold, at least five days before the sale. If at the time of the retaking $500 or more has been paid on the purchase price, the seller shall also give notice of the sale at least five days before the sale by publication in a newspaper published or having a general circulation within the filing district where the goods are to be sold. The seller may bid for the goods at the resale. If the goods are of the kind described in Section 8, the parties may fix in the conditional sale contract the place where the goods shall be resold.

SECTION 20. [Resale at Option of Parties.] If the buyer has not paid at least fifty per cent of the purchase price at the time of the retaking, the seller shall not be under a duty to

resell the goods as prescribed in Section 19, unless the buyer serves upon the seller, within ten days after the retaking, a written notice demanding a resale, delivered personally or by registered mail. If such notice is served, the resale shall take place within thirty days after the service, in the manner, at the place and upon the notice prescribed in Section 19. The seller may voluntarily resell the goods for account of the buyer on compliance with the same requirements.

SECTION 21. [Proceeds of Resale.] The proceeds of the resale shall be applied (1) to the payment of the expenses thereof, (2) to the payment of the expenses of retaking, keeping and storing the goods, (3) to the satisfaction of the balance due under the contract. Any sum remaining after the satisfaction of such claims shall be paid to the buyer.

SECTION 22. [Deficiency on Resale.] If the proceeds of the resale are not sufficient to defray the expenses thereof, and also the expenses of retaking, keeping and storing the goods and the balance due upon the purchase price, the seller may recover the deficiency from the buyer, or from anyone who has succeeded to the obligations of the buyer.

SECTION 23. [Rights of Parties Where There is no Resale.] Where there is no resale, the seller may retain the goods as his own property without obligation to account to the buyer except as provided in Section 25, and the buyer shall be discharged of all obligation.

SECTION 24. [Election of Remedies.] After the retaking of possession as provided in Section 16 the buyer shall be liable for the price only after a resale and only to the extent provided in Section 22. Neither the bringing of an action by the seller for the recovery of the whole or any part of the price, nor the recovery of judgment in such action, nor the collection of a portion of the price, shall be deemed inconsistent with a later retaking of the goods as provided in Section 16. But such right of retaking shall not be exercised by the seller after he has collected the entire price, or after he has claimed a lien upon

the goods, or attracted them, or levied upon them as the goods of the buyer.

SECTION 25. [Recovery of Part Payments.] If the seller fails to comply with the provisions of Sections 18, 19, 20, 21 and 23 after retaking the goods, the buyer may recover from the seller his actual damages, if any, and in no event less than one-fourth of the sum of all payments which have been made under the contract, with interest.

SECTION 26. [Waiver of Statutory Protection.] No act or agreement of the buyer before or at the time of the making of the contract, nor any agreement or statement by the buyer in such contract, shall constitute a valid waiver of the provisions of Sections 18, 19, 20, 21 and 25.

SECTION 27. [Loss and Increase.] After the delivery of the goods to the buyer and prior to the retaking of them by the seller, the risk of injury and loss shall rest upon the buyer. The increase of the goods shall be subject to the same conditions as the original goods.

SECTION 28. [Act Prospective Only.] This act shall not apply to conditional sales made prior to the time when it takes effect.

SECTION 29. [Rules for Cases not Provided for.] In any case not provided for in this act the rules of law and equity, including the law merchant, and in particular those relating to principal and agent and to the effect of fraud, misrepresentation, duress or coercion, mistake, bankruptcy, or other invalidating cause, shall continue to apply to conditional sales.

SECTION 30. [Uniformity of Interpretation.] This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

SECTION 31. [Short Title.] This act may be cited as the Uniform Conditional Sales Act.

SECTION 32. [Inconsistent Laws Repealed.] Except so far as they are applicable to conditional sales made prior to the time when this act takes effect, the following acts shall be and hereby are repealed. [Here repeal all existing acts in the field of conditional sales.]

SECTION 33. [Time of Taking Effect.] This act shall take effect

# ANNOTATIONS

## NOTE TO SECTION 1

It seems desirable to include sales where title is to pass on part payment since the opportunity for deception of the public exists in such cases, though for a shorter period than when title is retained till full payment. The statutes of Montana, New Brunswick, and Ontario expressly include such contracts. Occasional cases of such reservation of title are to be found. Powell vs. Clawson, 38 Pa. Super. Ct. 245.

The statutes of Iowa, Nebraska, New Jersey, New York, Virginia, West Virginia, Wisconsin and Wyoming define as conditional sales contracts which provide for the passing of the property to the buyer upon the performance of any condition, not merely upon the payment of the price. In such cases possession and apparent ownership are rendered deceptive by a reservation of title, and the danger to the public is as great as if the condition had been payment of the price. Instances of reservations of this kind are not uncommon. Forbes vs. Taylor, 139 Ala. 286 (third party to pay the price); Van Allen vs. Francis, 123 Cal. 474 (execution of mortgage); Tarr vs. Stearman, 264 Ill. 110 (rendition of services); Bailey vs. Dennis, 135 Mo. App. 93 (execution of note); Clark vs. Clement, 75 Vt. 417 (doing of work).

It is well known that some sellers attempt to evade the conditional sale recording acts by calling the contract a "lease" or "hiring agreement" and providing for the payment of "rent." Wherever these "leases" are substantially equivalent to conditional sales, they should be subject to the same restrictions. This equivalency seems to exist when the buyer is bound to pay rent substantially equal to the value of the goods and has the option of becoming or is to become the owner of the goods after all the rent is paid. In such a contract "rent" means the purchase price, and possession as "lessee" means the possession of a buyer under an executory contract of sale. That the buyer, in some cases, has the option of becoming the owner and thus a sale is not sure to take place, is of but small importance, for, as a practical matter, the buyer will always be willing to accept ownership when he has paid the value. The instances of a buyer declining to become the owner of goods where he has paid "rent" equivalent to the value of the goods, and electing to return the goods and allow these payments to be considered as actual rent, must be exceedingly infrequent.

The statutes of Alabama, Iowa, Maine, Missouri, Ohio, Washington, Wyoming, and Ontario class as conditional sales, leases substantially like those described in section one. In many cases where the "lessee" has absolutely agreed to buy the goods at the rent named the contract has been held one of conditional sale. Warren vs. Liddell, 110 Ala. 232; Lundy Furniture Co. vs. White, 128 Cal. 170; Coors vs. Reagan, 96 Pac. (Colo.) 966; Hine vs. Roberts, 48 Conn. 267; Staunton vs. Smith, 65 Atl. (Del.) 593; Hays vs. Jordan, 85 Ga. 741; Lucas vs. Campbell, 88 Ill. 447; Singer Sewing Mach. Co. vs. Holcomb, 40 Iowa 33; Campbell vs. Atherton, 92 Me. 66; Smith vs. Aldrich, 180 Mass. 367; Wickes Bros. vs. Hill, 115 Mich. 333; Gerrish vs. Clark, 64 N. H. 492; Equitable Gen. Prov. Co. vs. Eisentrager, 34 Misc. (N. Y.) 179; Kelly Road Roller Co. vs. Spyker, 215 Pa. 332; Carpenter vs. Scott, 13 R. I. 477; Pringle vs. Canfield, 19 S. D. 506; Conan vs. Singer Mfg. Co., 92 Tenn. 376; Whitcomb vs. Woodworth, 54 Vt. 544; Kidder vs. Wittler-Corbin Mach. Co., 38 Wash. 179.

"Leases" have likewise been construed to be conditional sale contracts in numerous cases where the buyer had merely an option to become the owner in return for the rentals paid. Unmack vs. Douglass, 75 Conn. 633; Vette vs. J. S. Merrill Drug Co., 117 S. W. (Mo.) 666; Lanter vs. Isenrath,

72 Atl. (N. J.) 56; Central Union Gas Co. vs. Browning, 210 N. Y. 10; Weiss vs. Leichter, 113 N. Y. Supp. 999; Hamilton vs. Highlands, 144 N. C. 279; Sage vs. Sluetz, 23 Ohio St. 1; Herring-Hall-Marvin Co. vs. Smith, 43 Ore. 315; in re Morris, 156 Fed. 597; Singer Mfg. Co. vs. Nash, 70 Vt. 434.

## NOTE TO SECTION 2

The special right of a buyer under a conditional sale where he is not in default is to retain possession even though the price is not yet paid, and to acquire title, and not merely a right of action for breach of contract, by satisfying the condition.

The remedies which are common to all buyers of goods, whether the contract be conditional or unconditional, are left to the Uniform Sales Act or to the prevailing common law. The courts have found some difficulty in fixing the rights of the parties where a warranty has been made in a conditional sale contract. Rogers & Thornton vs. Otto Gas Engine Works, 7 Ga. App. 587; W. W. Kimball Co. vs. Massey, 126 Minn. 461; Peuser vs. Marsh, 167 App. Div. (N. Y.) 604; Cooper vs. Payne, 186 N. Y. 334; Blair vs. A. Johnson & Sons, 111 Tenn., 111. If the seller's promise with respect to the goods has been broken, it is submitted that the buyer ought to be allowed to recover damages suffered by that breach, whether the buyer has become the owner of the goods or not.

## NOTE TO SECTION 3

This section is elementary, but is inserted for the sake of a complete enumeration of the rights of the seller against the buyer. The seller's only remedies are an action for the price or the retaking of the goods or both. Of course, no attempt is made to state the rights of the seller against third persons, as, for example, the right to maintain trover or replevin. Such rights are the same as those of any other owner of personal property.

## NOTE TO SECTION 4

This states the general rule of the common law. It is accepted by the statute, except so far as the requirements of filing, etc., qualify it.

## NOTE TO SECTION 5

Statutes requiring the recording or filing of conditional sale contracts now exist in 29 states, namely: Alabama, Arizona, Colorado, Connecticut, Georgia, Florida, Iowa, Kansas, Maine, Minnesota, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Texas, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. In four other states recording statutes partially covering the filing of conditional sales have been passed, namely, in Massachusetts, Michigan, Oregon, and Pennsylvania. In Kentucky these contracts are treated as chattel mortgages and required to be recorded as such. To prevent injury to innocent persons who may rely on the buyer's apparent ownership, it seems desirable to insert this filing requirement in the uniform act. The burden on the seller is slight, and the benefit to the public is great.

The question of difficulty is, in whose favor shall this filing statute operate? Against what persons shall the reservation of title be void in the absence of recording?

As far as subsequent purchasers from the buyer are concerned, the statutes are practically unanimous in protecting them. Under the definition of purchaser in section 1 mortgagees and pledgees are included.

The statutes of Alabama, Virginia, Washington, West Virginia, New Brunswick, Ontario, and Saskatchewan expressly require that the purchasers to be protected shall have paid "value." This element of value is necessarily implied in the word "purchaser." There is no equity in protecting donees of the buyer by the recording section. In view of the great variety of definitions of "value," it is deemed wise to leave that question to be determined by the pre-existing local law and not to attempt to make uniform the law by a definition in this act.

It is well established that only purchasers without notice of the conditional nature of the buyer's interest should be protected. Express provisions to that effect are found in the statutes of Kansas, Minnesota, Missouri, Oklahoma, South Carolina, Virginia, West Virginia, New Brunswick, Ontario, and Saskatchewan. See also Anderson vs. Adams, 117 Ga. 919; First Nat. Bk. vs. Tufts, 53 Kans. 710; VanBuren vs. Stubbings, 149 Mich. 206; Barnes vs. Rawlings, 74 Mo. App. 531; Kelsey vs. Kendall, 48 Vt. 24; Perkins vs. Best, 94 Wis. 168.

As to creditors, in a few states, namely, Alabama, Georgia, North Dakota, South Carolina, and Washington, only creditors whose rights accrue subsequent to the conditional sale are protected, but in a great majority of the states the date of the extension of the credit is not important. See the statutes of the various states and Patton vs. Phoenix Brick Co., 150 S. W. (Mo.) 1116; Hamilton vs. David C. Biggs Co., 179 Fed. 949; (C. C. Ohio); Corbett vs. Riddle, 209 Fed. 811 (C. C. A. Va.); Huffard vs. Akers, 52 W. Va. 21. In New York creditors are not protected at all by the recording act.

Creditors have been classed in a second way by the courts, namely, as lien creditors and general creditors. In many states there are decisions to the effect that only those creditors who have by judgment, or levy of an execution, or by attachment, secured a lien on the particular goods which were the subject-matter of the conditional sale, are protected. The general creditors of the buyer are not within the protection of the recording act. John Deere Plow Co. vs. Anderson, 174 Fed. 815 (C. C. A. Ga.); In re Atlanta News Pub. Co., 160 Fed. 519 (D. C. La.); in re Hager, 166 Fed. 972 (D. C. Iowa); Big Four Implement Co. vs. Wright, 207 Fed. 535 (C. C. A. Kans.); Crucible Steel Co. vs. Holt, 174 Fed. 127 (C. C. A. Ky.); Wilson vs. Lewis, 63 Neb. 617; Reischmann vs. Masker, 69 N. J. L. 353; Mechanics Bank vs. Gullett Gin Co., 48 S. W. (Tex.) 627; Malmo vs. Shubert, 79 Wash. 534; E. L. Essley Mach. Co. vs. Milwaukee Motor Co., 160 Wis. 300. In several states the statutes expressly protect lien creditors only. This is true in Alabama, Montana, Nebraska, New Jersey, Vermont and Wyoming.

The statute as drafted protects both prior and subsequent creditors who have acquired a lien on the goods by levy or attachment. By such act they have in a certain sense become purchasers of the goods. They have required legal property rights in the goods, and, if they have done so innocently, they ought to be protected as against the conditional seller. Their equities are superior to his.

It is very generally held that creditors, in order to claim the protection of the statute, must have been without notice of the conditional nature of the buyers' rights at the time when their rights were fixed. See the statutes of Alabama, Arizona, Iowa, Nebraska, New Jersey, North Dakota, South Dakota, and Washington. See also Diamond Rubber Co. vs. Fourth Nat. Bk., 55 So. (Ala.) 1911: Jones vs. Clark, 20 Colo. 353; Reisman vs. Wester, 72 S. E. (Ga.) 942; F. P. Gluck Co. vs. Therme, 134 N. W. (Iowa) 438; Dyer vs. Thorstad, 35 Minn. 534; Norton vs. Pilger, 30 Neb. 860; Batchelder vs. Sanborn, 66 N. H. 192; In re Vandewater & Co.,

219 Fed. 627 (D. C. N. J.); McPhail vs. Gerry, 55 Vt. 174; Secor vs. Close, 145 Pac. (Wash.) 56; Wolf Co. vs. Kutch, 147 Wis. 209.

In a majority of the states the contract or a copy may be filed. See the statutes of Arizona, Kansas, Michigan, Minnesota, Missouri, Montana, New York, North Dakota, Ohio, Oklahoma, Texas, Wisconsin, Wyoming, and Saskatchewan. In Alabama, Iowa, and New Jersey the contract itself must be recorded. In Nebraska, New Brunswick, Ontario, and Prince Edward Island the copy alone may be filed. In New Hampshire, Virginia, Washington, and West Virginia only memorandum of the contract need be filed. To require that the original contract or a copy be filed seems best. Doubtless generally a copy will be filed. It seems useless to restrict the seller to either the original or a copy. The object is to make public the terms of the sale. The exact words of the contract will do that better than any abbreviation or memorandum.

Under the statute the contract is valid for ten days without filing. It was thought unwise to require the seller to file immediately. The seller's office may be far distant from the filing district. He should have a reasonable time to mail his papers and get them filed. A filing after ten days from the date of the making of the contract of course protects the seller against all subsequent purchasers or creditors who buy or levy on the goods.

## NOTE TO SECTION 6

The filing statutes now in force are of two classes with respect to the place of record required. One requires record in a local office, such as the town clerk's office: the other class makes the county the unit of record. Connecticut, Maine, Massachusetts, Michigan, New Hampshire, New York (with some exceptions), Vermont, and Wisconsin have the town recording system. The twenty-three other states having recording statutes require record in the county office where deeds are recorded and all important records with respect to real property are kept.

The county system has seemed the better, since the records in the county office will be kept in much more orderly fashion than in the town offices, and since the convenience of persons desiring to deal with the goods will be served quite as well by a record in the principal town or city of the county as if the record were located in some remote office in the country, but in view of the fact that communities become accustomed to a method long in use, and that a change would be difficult especially as chattel mortgages are not covered by this Act, the office of filing is left blank.

The next question to be decided is, which city or county shall be made the place of record? There are but two practical possibilities, namely, the place of the buyer's residence and the place where the goods are situated.

Connecticut, Iowa, Maine, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Ohio, South Carolina South Dakota, Washington, Wisconsin, New Brunswick, Ontario, Prince Edward Island, and Saskatchewan (15 states and 4 Canadian provinces) require record in the district of the buyer's residence.

Arizona, Montana, North Dakota, Virginia, West Virginia, and Wyoming (6 states) record in the county where the goods were at the time of sale.

Oklahoma and Kansas (2 states) record where the goods shall be kept after the sale.

In Alabama, Georgia and Michigan a double record is required, one in the district of the buyer's residence and one in the district where the goods were delivered. In Texas the record may be either in the county of the buyer's residence or in the county of delivery.

The desideratum is to have a record in the place where the goods are permanently kept. It is there that innocent purchasers and creditors will be misled by the apparent ownership of the buyer. Record in the place of the buyer's residence is of little importance, unless the goods are kept there. The district "in which the goods are first kept for use by the buyer" will be the district where the goods are first located with any degree of permanence. The seller may keep the goods for a time after the sale; the buyer may receive the goods at one place and immediately transmit them to another; the goods may be technically delivered to the buyer by handing them over to a carrier; but in none of these cases is the district of temporary location the district where a record should be made.

It is of particular importance that the rules governing the place of filing be uniform in the several states. Many sellers do business of making conditional sales throughout the nation. For their sake a single simple rule everywhere is important; and the interest of other members of the public is the same.

## NOTE TO SECTION 7

In practically all American states a conditional seller who has reserved title to a chattel which is affixed by the vendee to his real property has no rights against a subsequent purchaser or mortgagee of the real property who has no notice of the conditional sale of the chattel. Price vs. Case, 10 Conn. 375; J. S. Schofield Sons Co. vs. Woodward, 72 S. E. (Ga.) 509; Allis-Chalmers Co. vs. City of Atlantic, 144 N. W. (Iowa) 346; Rowand vs. Anderson, 33 Kans. 264; Jenks vs. Colwell, 66 Mich. 420; Hopewell Mills vs. Taunton Sav. Bk., 150 Mass. 519, 521; Tibbotts vs. Home, 65 N. H. 242; Brennan vs. Whittaker, 15 Ohio St. 446; Washburn vs. Inter-Mountain Mining Co., 109 Pac. (Ore.) 382; Union Bank vs. Wolf Co., 114 Tenn. 255, 4 Am. & Eng. Ann. Cases 1073; Davenport vs. Shants, 43 Vt. 546.

In four states comparatively recently statutes have been enacted declaring that the condition reserving title to fixtures shall be void as against subsequent purchasers or mortgagees of the real property who have no notice of the conditional sale, unless the conditional sale contract is recorded in the office where a deed of the land would be recorded. See the statutes of Massachusetts, New York, Oregon and Pennsylvania.

Section 7 above is modeled in the main after these statutes. If the property can be severed from the realty without material injury, it seems desirable to give the conditional seller a chance to protect himself against dealers with the real estate by the making of a record. If this record is in the same office where deeds of real property are recorded, the labor of searching for conditional sale contracts on the part of the prospective buyer or mortgagee of the land will be slight.

A distinction, however, is made between goods affixed to realty which have lost their identity and goods affixed to realty which can be readily severed. A separate sentence has also been inserted to cover the peculiar case of the sale of goods to a contractor to be affixed by him to the real property of another, in other words, the case of the validity of the conditional sale of a fixture as against the "owner" of the realty.

## NOTE TO SECTION 8

Statutes making special provision for the conditional sale of railroad and street railway rolling stock and equipment are now found in 46 states. They are strikingly similar.

**Goods Covered by the Statutes.** The phrase most commonly used to describe the goods covered by these statutes is "railroad and street

railway equipment and rolling stock." In a few states interurban equipment and rolling stock are specifically mentioned, and there seems to be no reason why they should not be included. In some states only railroad equipment and rolling stock are mentioned. The slight variations of wording are so numerous that they cannot be detailed here. The words used in Section 8 are supported by a majority of the statutes.

**Acknowledgement Required.** Acknowledgement is required in 40 of the 46 states having these railroad statutes. It seems desirable to give some formality to the contract, in view of the large amounts of money generally involved and the fact that record is required in a state office.

**Persons Protected.** The existing statutes in most instances make the reservation of title void as against judgment creditors and purchasers in good faith. It seems desirable to give the protection of the statute, in case of failure to record, to the same persons named in the general filing statute herein, Section 5.

**Place of Record.** In 28 of the states the place of record is made the office of the Secretary of State and in four others record is required in the office and also in a county office. In view of the statewide nature of the business often involved and the importance of the contracts, state registration is justifiable.

**Marking of Engines and Cars.** In all but four of the 46 states the engines and cars are required to be marked with the name of the seller and a statement indicating his ownership. This provision is continued in Section 8 above.

**Duration of Conditional Sale Contracts of Railroad Equipment.** In 12 states the time during which these contracts can run is limited. In Arizona, Delaware, Minnesota, Montana, North Dakota, South Dakota, and Wisconsin the limit is 10 years; in Mississippi and Tennessee 15 years; in Maryland 20 years, and in Colorado and Kentucky 25 years. A provision requiring the refiling of these contracts at the end of fifteen years has been inserted in Section 11.

## NOTE TO SECTION 9

This section attempts to state a rule of law quite widely recognized. Bass vs. International Harv. Co., 53 So. (Ala.) 1014; Flint Wagon Works vs. Malone, 81 Atl. (Del.) 502; Clarke Bros. vs. McNatt, 132 Ga. 610; Trousdale vs. Winona Wagon Co., 25 Idaho 131; Barbour vs. Perry, 41 Ill. App. 613; Winchester Wagon Works vs. Carman, 109 Ind. 31; Rogers vs. Whitehouse, 71 Me. 722; Spooner vs. Cummings, 151 Mass. 313; Pratt vs. Burhans, 84 Mich. 487; Columbus Buggy Co. vs. Turley, 73 Miss. 529; Baker vs. Tolles, 68 N. H. 73; Fitzgerald vs. Fuller, 19 Hun 180; Star Mfg. Co. vs. Nordeman, 118 Tenn. 384; Oconto Land Co. vs. Wallschlaeger, 155 Wis. 418. Where the same seller attempts to reserve the property in himself and at the same time to allow a resale by a retailer in the ordinary course of business, he is doing two inconsistent things. A purchaser from a retailer in the ordinary course of business ought not to be obliged to examine the records to learn whether retailer has title or whether title has been reserved under a conditional sale contract. That the goods have been put into the retailer's stock with the consent of the wholesaler is conclusive evidence that they are there for sale and that the retailer has title or the right to convey.

The mere constructive notice of the record of the contract ought not to prevail as against a buyer from a retailer in the ordinary course of business. Mortgagees and pledgees, since they are not purchasers "in the ordinary course of business," and creditors of the retailer will be bound by the provisions of the recording act and will have constructive notice of the

conditional sale, but in the case of purchasers in the ordinary course of business, as distinguished from purchasers of the stock in bulk, no notice of the conditional sale should be effectual to bind them.

Public Acts of Michigan, 1915, p. 112, Sec. 1, requires that a contract for the conditional sale of goods to a retailer to be resold by him shall be recorded in order to be valid as against anyone except the seller and buyer. But in Michigan there is no general recording statute.

## NOTE TO SECTION 10

In Minnesota, Montana, Nebraska, New York, Texas, Virginia, Washington, Wisconsin, Wyoming, New Brunswick, Ontario, Prince Edward Island, and Saskatchewan the statutes expressly provide as to the duties of the clerk receiving a conditional sale contract for filing. The provisions are, in the main, like those above indicated. The clerk would, in order to make the record effective, necessarily be obliged to have some such system of recording, but it seems better to require it expressly rather than to leave it to the discretion of the various officers concerned. Uniformity of style of record is of some importance.

The filing fee for ordinary contracts is 50 cents in Montana and Prince Edward Island; 25 cents in Nebraska, Virginia, Washington, Wyoming, and Saskatchewan; 12 cents in New York and Wisconsin, and 10 cents in Minnesota, New Brunswick, and Ontario. It is desirable to encourage sellers to file their contracts and therefore the fee of 10 cents has been suggested. The labor of the clerk will be very slight.

The fee for filing contracts with respect to railroad equipment is found to be $15 in two states, $10 in one state, $5 in seven states, $2 in four states, and $1 in four states. The fee of $1 seems adequate to compensate the Secretary of State.

The amount of the fee has been bracketed to indicate the possibility of local variation upon this point.

## NOTE TO SECTION 11

In only a few jurisdictions are there provisions limiting the effectiveness of the record of conditional sale contracts. In Minnesota the record is good for but six years, in Nebraska for five years, in Saskatchewan for two years, and in New York, Wisconsin and Wyoming for one year only. Notwithstanding the slight acceptance of this principle of refiling, it seems desirable to require a refiling after three years. The ordinary conditional sale contract will be performed or broken before that time. If a contract extends over a period longer than three years, a fresh record should be made at the end of three years. Searchers should not be obliged to go back for an indefinite period to discover whether the title to a piano is in the possessor of it.

As shown in the notes to Section 8, in 12 states the validity of car trust contracts is limited, the periods ranging from 10 to 25 years. A longer time is ordinarily required for the performance of these contracts than for the performance of an ordinary conditional sale contract. It would seem that 15 years, with a provision for refiling at the end of that time, would be sufficient.

## NOTE TO SECTION 12

The procedure upon the cancellation of a conditional sale agreement, due to performance, is expressly provided for in but few states. In Minnesota, New York, Vermont and Virginia, and in New Brunswick and Saskatchewan, provisions similar to those made in Section 12 are set forth

in the statutes. Here, as in the case of filing and refiling, it seems desirable to make the record uniform and to prescribe an orderly procedure to be followed in dealing with these contracts. The clerk would in most cases probably, without statutory direction, treat the question of cancellation as above provided, but it is advantageous to make certain such treatment.

The fees for the cancellation of the railroad equipment contracts as set forth in the present statutes, range from three dollars to fifty cents. In the majority of states in which provisions have been found, namely, in 12, the fee is one dollar. The fee of fifty cents seems adequate to compensate the official for his labor, and seems in correct proportion to the fee of one dollar for filing the contract.

## NOTE TO SECTION 13

Unless there is a record of the conditional sale contract in the place in which the goods are located, the public is apt to be defrauded. Innocent buyers and chattel mortgagees will naturally examine only the records of the city or county in which the goods are located. They are not apt to know where the goods were originally delivered, or where the possessor of them lived, when he bought them. It seems desirable to compel the seller to make a new record of the contract when the goods are moved into a new county, or for the first time brought into the state. In order that it may be reasonable to compel the seller to make this record, every effort must be made to give the seller notice of the removal. He will naturally learn in many cases of such removal, because he will be collecting the part payments and will be looking for the buyer. But if a civil penalty is placed upon removal by the buyer without notice to the seller, the chances of the seller knowing of such removal and being able to file the contract in the new county will be greatly increased. In view of the danger to the seller if the goods are taken into a new county where there is no record, the penalty of allowing the seller to retake the goods as on default, does not seem too harsh.

In Texas the seller is allowed to retake the goods if the buyer removes them from the county without his consent. In Vermont for the removal of the goods from the state without the seller's consent the buyer may be subjected to a penalty of twice the value of the goods. In Saskatchewan removal from the registration district without 20 days' written notice to the seller is prohibited under penalty of $100 fine.

It seems unreasonable to compel the buyer to get the consent of the seller to a removal to a new county or a new state unless he has agreed to such a provision in his original contract. Such consent might be withheld unjustly by the seller. If the seller knows of the removal, he can refile the contract. Such refiling is what is desired, not an absolute prohibition against moving the goods about from place to place.

Conditional sale contracts frequently contain provisions prohibiting removal and allowing retaking by the seller on that account and such provisions have been forced by the courts. Hall vs. Draper, 20 Kans. 137.

The interest of the buyer ought to be assignable before complete payment, but the assignment is of so much importance to the seller that he should receive notice of it as soon as possible. The section requires notice to be given under penalty of allowing the seller to treat the buyer as if in default. If the seller is to look to another than the original buyer for his payments, he should know that fact as soon as possible. If the seller is not obliged to look to that other for the payments, he should know that possession of the goods has passed to another or that another claims some interest in the goods. The statutes of at least 27 states make a sale by the buyer criminal, in some cases merely where such sale is without the written

consent of the seller, and in others where the subsale or other transfer is with fraudulent intent.

## NOTE TO SECTION 14

As stated previously, the place where the goods are situated is the county where it is important to have the record for the purpose of protecting the public. In a few jurisdictions the statutes provide that the seller must refile the contract on a removal of the goods to a new county and on the bringing of the goods into the state for the first time. This refiling is not required to be immediate. In Alabama the refiling must be within 30 days after the removal, in Georgia within six months, in Mississippi within 12 months, in Texas within four months, in West Virginia within three months, and in Saskatchewan within 60 days. It might be unreasonable to require the seller to make a new record at once. He should be given time to learn of the removal and to prepare and send his papers for record. Most sellers collect part payments frequently and will thus learn of the removal. The provisions of Sections 11 and 13 will assist in bringing the removal to the seller's attention. The ten day period within which the contract must be filed seems not too strict a requirement since the time runs not from the removal but from the seller's notice of the place to which the goods have been removed.

A large number of cases have arisen in which the principal question was as to the law which controlled where goods were removed from one state to another. It seems to be settled that if the goods are sold in state A for the purpose of being removed to state B, the law of state B will control regarding the recording of the conditional sale contract. Summers vs. Carbondale Mach. Co. 173 S. W. (Ark.) 194; Beggs vs. Bartels, 73 Conn. 132; David Bradley & Co. vs. Kingman Implement Co., 112 N. W. (Neb.) 346; Lanston Monotype Mach. Co. vs. Curtis, 224 Fed. 403; Potter Mfg. Co. vs. Arthur, 220 Fed. 843; In re Gray, 170 Fed. 638. But if the goods are sold under a conditional sale contract in state A and delivered in state A, and after some use they are removed to state B, there is a great conflict of opinion. In the following cases the law of state A, the state where the contract was made, controlled as to the conflicting rights of the seller and claimants under the buyer: Fuller vs. Webster, 95 Atl. (Del.) 335; Harper vs. People, 2 Colo. App. 177; Waters vs. Cox, 2 Bradw. (Ill.) 129; Baldwin vs. Hill, 4 Kans. App. 168; Gross vs. Jordan, 83 Me. 380; Davis vs. Osgood, 69 N. H. 427; Warnken vs. Chisholm, 8 N. D. 243; Studebaker Bros. Co. vs. Mau, 13 Wyo. 358. In the following cases the law of state B, the state to which the goods were removed, controlled as to the formalities necessary to protect the seller's rights under the conditional sale contract: Corbett vs. Riddle, 209 Fed. 811; Public Parks Amus. Co. vs. Embree-McLean Co., 64 Ark. 29; Weinstein vs. Freyer, 93 Ala. 257; North vs. Goebel, 138 Ga. 739; Marvin Safe Co. vs. Norton, 48 N. J. L. 410; Emerson Co. vs. Proctor, 97 Me. 360; National Cash Register Co. vs. Paulson, 16 Okla. 204; Sanger vs. Jesse French Co., 21 Tex. Civ. App. 523.

If a uniform law with respect to conditional sales were adopted, and this law provided for the refiling of the contract upon removal of the goods, the difficulties illustrated by these cases would be avoided. A slight extra burden would be placed upon the seller in refiling the contract, but much litigation and loss on the part of the innocent public would be prevented.

## NOTE TO SECTION 15

Provisions of this sort imposing a criminal penalty for acts done with a fraudulent intent and calculated to destroy the seller's security are very

common. It seems desirable to insert such a section for the prevention of fraud upon the seller, and also fraud upon the innocent public in some cases.

In Kansas, Missouri, Nevada, New Jersey, Ohio, Oregon, and Washington the statute makes fraudulent destruction of the goods a crime.

In Kansas, Missouri, Oregon, South Dakota, and Washington fraudulent injury of the goods is a crime.

In Connecticut, District of Columbia, Idaho, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Missouri, Nevada, New Hampshire, New Jersey, New York, North Dakota, Ohio, Oregon, South Dakota, Tennessee, and Washington fraudulent concealment of the goods is covered by the criminal statute.

In Arkansas, California, Connecticut, District of Columbia, Florida, Idaho, Maryland, Michigan, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, North Dakota, Ohio, Oregon, South Dakota, Virginia, Washington, and Wyoming the statutes make fraudulent removal a crime.

In Alabama, Arkansas, California, Colorado, Connecticut, District of Columbia, Florida, Georgia, Idaho, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Ohio, South Dakota, Tennessee, Vermont, Virginia, Washington, and Wyoming the fraudulent sale or other disposal of the goods is a crime.

The fines imposed vary from $1,000 as a maximum in Nebraska, Nevada, New Hampshire, and North Dakota to $5.00 as a minimum in Virginia. The periods of imprisonment to which the criminal may be sentenced vary from 10 years as a maximum in Nebraska to 15 days as a minimum in Kentucky and Virginia. The one year period of imprisonment seems reasonable as a maximum and it seems desirable to make the possible fine depend upon the value of the goods.

Some of these criminal statutes apply specifically only to conditional sales, others to conditional sales and chattel mortgages, and still others by their express wording might seem to be confined to cases of chattel mortgages. The latter class are inserted here, since the offense in the case of fraud on the part of a chattel mortgagee is essentially similar, and doubtless in many cases the statutes have been held to apply to conditional sales by implication.

## NOTE TO SECTION 16

This right on the part of the seller is an elementary one. It is generally reserved in the contract, but it is deemed wise to make it a statutory right, rather than a right to be contracted for. This right is restricted and limited by the following sections, which prescribe what the seller must do after resuming possession.

It is deemed wise to insert a statement that the seller may resume possession without process, only if he can do so without breach of the peace; but that he must resort to legal process if he cannot obtain the goods without breach of the peace.

## NOTE TO SECTION 17

The object of this section is to enable the seller to avoid unnecessary expense and trouble. Often the seller without this section would have to make one trip to the buyer's town to retake the goods, then store the goods at considerable expense during the redemption period, and lastly make a second trip to the buyer's town to resell the goods. If the buyer has from twenty to forty days' notice that he must pay up or lose the goods, his

rights are as well protected as if he had a ten days' period of redemption after the goods have been retaken. The object is to give the buyer a reasonable time to raise the back payments. Either a notice of intention to retake or a period of redemption after retaking will give the buyer protection. If the former enables the seller to avoid useless trouble and expense, the seller should have the option of taking either method.

## NOTE TO SECTION 18

The theory of the following sections is that a conditional sale is practically equivalent to a chattel mortgage, and that the rights of buyer and seller in the conditional sale ought to coincide with those of chattel mortgagor and mortgagee as nearly as possible. Hence the buyer is given the right of redemption after default. It seems but little hardship on the seller to compel him to retain the goods within reach of the buyer for ten days and allow the buyer to redeem the goods, if he can raise the money. In ten days there should be opportunity to borrow the money, or to obtain it through the receipt of salary or wages. To extend the period unduly imposes a hardship upon the seller in every case, and will benefit a buyer only in rare instances. Experience shows that if he does not do so promptly he seldom attempts to redeem. It is essential that the buyer should be able to discover just how much is claimed to be due on the contract and as a result of the retaking. The seller should furnish a written statement of this. The fixing of a small penalty for failure to deliver such a statement may stimulate promptness on the part of the seller.

In Maine, Massachusetts, Nebraska, New York, Pennsylvania, Vermont, Wisconsin, New Brunswick, Ontario, Prince Edward Island, and Saskatchewan the statutes expressly provide for redemption by the buyer. the period of redemption varying from 15 days to 40 days. In some states in the absence of statutes the courts have allowed the buyer the right of redemption. Miller vs. Steen, 30 Cal. 407; Liver vs. Mills, 101 Pac. (Cal.) 299; Puffer vs. Lucas, 112 N. C. 377.

## NOTE TO SECTION 19

In many states the buyer, upon default, forfeits the part payments already made, if the seller retakes the goods. Bray vs. Lowery, 163 Cal. 256; Herbert vs. Rhodes-Burford Furniture Co., 106 Ill. App. 583; Fleck vs. Warner, 25 Kans. 492; Lorain Steel Co. vs. Norfolk, 187 Mass. 500; Thrilby vs. Rainbow, 93 Mich. 164; C. W. Raymond Co. vs. Kahn, 124 Minn. 426; Duke vs. Shackleford, 53 Miss. 552; Richards vs. Hellen, 133 N. W. (Iowa) 393; Stearns vs. Drake, 24 R. I. 272. But in several of these cases the holding was merely that the seller need not return the part payments before bringing replevin for the goods, and the court hinted that the buyer might later recover his part payments, less a reasonable reduction for the use of and damage to the goods. In other cases it has been held that the buyer is entitled to have his part payments, less rent and damage charges, returned to him when the seller retakes the goods. Hill vs. Townsend, 69 Ala. 286; Commercial Pub'g. Co. vs. Campbell Printing-Press Co., 111 Ga. 388; Quality Clothes Shop vs. Keeney, 106 N. E. (Ind.) 541; Shafer vs. Russell, 28 Utah 444. The tendency of the courts is to avoid the old hard and fast rule that the buyer forfeited his part payments on default. The courts recognize the equity of the buyer in the goods on account of his part payments. In some states they have had to resort to indirect methods of giving the buyer the benefit of this equity. In other states they have felt bound by the old strict rule of forfeiture. It seems desirable to do away with this doubt and indirection and to admit

clearly the right of the buyer to have the benefit of his part payments after default.

In a few states statutory schemes for relieving the buyer of the hardship of forfeiture have been provided. These may be divided into three classes. There are first the states which provide that the seller may not retake the goods for default, unless he returns to the buyer the part payments, less a reasonable amount for the use of the property and damage to it. Such systems prevail in Missouri and Ohio. In Missouri the right to the return of part payments on retaking exists in all cases. In Ohio only when the buyer has paid an amount in excess of twenty-five per cent of the purchase price must the seller return part payments on retaking. This scheme is open to the objection that it is difficult to determine what the value of the use of the goods has been and whether they have been damaged or not. The seller is apt to impose on the buyer and retain too much of the part payments under a claim of rent and alleged damage to the goods.

In Massachusetts and Pennsylvania the right to have a resale is optional with the buyer. In Massachusetts, where seventy-five per cent or more of the price has been paid, the buyer may demand a resale, and will be entitled to the surplus in the hands of the seller after the payment of the full price and expenses. This statute applies only to furniture and other household effects. In Pennsylvania the statute respecting the conditional sale of chattels to be attached to real property provides that the buyer may, within 10 days after the retaking, demand a resale of the property and shall be entitled to any surplus in the hands of the seller after the satisfaction of the price and the expenses. In Vermont the seller may resell the goods, and if he does so, the buyer shall be entitled to the surplus thus created. The option in Vermont is with the seller.

In a third class of states resale is compulsory. These states are New York and Tennessee. In these states the seller is obliged, after retaking the goods, to resell them and return to the buyer the excess in his hands after the payment of the price and the expenses of resale. This compulsory resale insures the return of all part payments equitably due him. If he has contracted for goods at a price of $100 and has paid $75 at the time of default and retaking, and the goods on the compulsory resale bring but $25, the buyer is entitled to no return of part payments. The use he has had of the property has evidently been worth $75, for the goods have become so worn and damaged that they will bring only $25. But if, in the case supposed, the goods bring $50 on the resale, it is evident that the buyer ought to have returned to him $25, less the expense of resale. If such return is not made, the seller will have received $25 unjustly and the buyer will have been mulcted in that amount because of his default.

This latter system, namely, that of compulsory resale, is the one adopted in the proposed statute. It is believed to be better than the optional resale plan adopted in Massachusetts and Pennsylvania, because it works automatically. Many buyers of goods on conditional sale contracts are men of small means, little versed in the law and unfamiliar with correct business methods. They will not, it is believed, be apt to take advantage of an optional resale provision. They will not ordinarily know of it. It may be said that, if they are careless with respect to their own rights, they do not deserve protection. But the answer is that they frequently will not know what their own rights are, that they are a class of buyers who are frequently very needy and ignorant.

In New York the resale must take place within 60 days after the retaking of the goods and not before 30 days after such retaking. This seems a needlessly long period. It is believed that, if the buyer does not redeem the goods, the seller should be allowed to dispose of the matter

by resale as soon as he can do so with due regard to a protection of the buyer's rights. Ten days after the period of redemption has expired seems long enough in which to advertise the resale. In Tennessee the seller must advertise the property for resale within 10 days after the retaking.

The length of notice of the resale which the seller must give varies in the different states. In Massachusetts the requirement is three days' newspaper notice; in New York 15 days' notice to the buyer is required; in North Carolina 10 days' notice to the buyer and 20 days' public notice by posting; in Tennessee 10 days' notice to the public by three posted notices; in Vermont 10 days' notice to the buyer and 10 days' notice to the public by two posed notices.

The notices required by the proposed Section 15 are believed to be reasonable and to give the buyer and the public sufficient time to prepare to attend the sale ready to bid, if they desire to do so.

In New Brunswick, Ontario, and Prince Edward Island 5 days' personal notice to the buyer or 7 days' written notice is required. In Saskatchewan the buyer is entitled to 8 days' personal notice of the resale or 10 days' written notice. The resale in the Canadian provinces is optional with the seller and not for the purpose of awarding the buyer the surplus after the payment of the price and expenses.

Under this statute a compulsory resale is provided for only where the buyer has paid a considerable portion of the purchase price, namely, fifty per cent. If he has paid less, statistics show that nothing is realized for the buyer on a resale. The depreciation of the goods more than eats up the buyer's equity. Where there is no chance of benefiting the buyer, a compulsory resale is a useless and expensive formality. If the buyer wants a resale for the purpose of determining his equity, he may, under the provisions of the following section demand it, even though he has paid only ten per cent of the price. But it seems undesirable to require such resale as a matter of law in cases where business experience shows that it can do no good.

The last sentence of this section gives greater liberty as to the place of sale to the parties in the case of the resale of railroad equipment.

## NOTE TO SECTION 20

As explained in the notes to Section 19, a resale where less than fifty per cent of the price has been paid has been shown to be a useless, expensive formality, not productive of any good to buyer or seller. Nevertheless, if the buyer desires to have a resale when he has paid less than fifty per cent of the price, he ought to have the right to demand a resale. This section gives him such right but does not make the resale compulsory where less than fifty per cent has been paid.

## NOTE TO SECTION 21

The provisions of this section are supported by the statutes of Massachusetts, New York, Pennsylvania, Tennessee and Vermont, the only statutes in which resale as a means of estimating the amount to be returned to the buyer is recognized. That the buyer should have the surplus, which represents his equity in the goods, is in accord with the chattel mortgage theory of the conditional sale.

## NOTE TO SECTION 22

This section follows out the mortgage theory. The chattel mortgagee can, of course, recover any deficiency after foreclosing his mortgage. The result produced by this section has been reached in a number of cases.

Matteson vs. Equitable Min. & Mill Co., 143 Cal. 436; Kinney vs. Avery & Co., 80 S. E. (Ga.) 663; Christie vs. Scott, 94 Pac. (Kans.)214; Dederick vs. Wolfe, 68 Miss. 500; McCormick Mach. Co. vs. Koch, 8 Okla. 374, Ascue vs. C. Aultman & Co., 2 Willson (Tex.), Sec. 947.

## NOTE TO SECTION 23

This section frees the seller from all obligations where the law is complied with and there is no resale. In such cases the equity of the buyer is probably practically worthless and it has seemed best to wipe out the transaction and clear the slate of all obligations on both sides.

## NOTE TO SECTION 24

It is often held that the retaking of the goods by the seller constitutes an election which prevents him from later suing for the purchase price. Nashville Lumber Co. vs. Robinson, 121 S. W. (Ark.) 350; Muncy vs. Brain, 110 Pac. (Cal.) 945; Manson vs. Dayton, 153 Fed. 258; Turk vs. Carnahan, 25 Ind. App. 125; Perkins vs. Grobben, 116 Mich. 172; A. F. Chase & Co. vs. Kelly, 146 N. W. (Minn.) 1113; Madison Live Stock Co. vs. Osler, 39 Mont. 244; Nelson vs. Gibson, 143 App. Div. (N. Y.)894; Kelly Co. vs. Schlimme, 220 Pa. 413; Stewart & Holmes Drug Co. vs. Ross, 74 Wash. 401. This seems correct, only if the act of retaking necessarily amounts to a rescission of the contract. This is not necessarily true because it is perfectly possible that the seller has resumed possession merely for the purpose of realizing on his security. On the other hand, the buyer ought not thereafter to be liable for the price, unless the security which he has given for the payment of the price, the goods themselves, proves insufficient to compensate the seller. In Section 22 the seller is allowed to recover the deficiency after a resale. If he retakes the property, he is deemed to have elected to look to the goods as his primary security. If that should fail, he may have the secondary remedy of recovering the deficiency from the buyer.

It seems obvious that action for a single installment of the price not the final installment, does not amount to an election to treat the buyer as the owner of the goods. The buyer is not, according to the most essential term of the contract, to become the owner until he has paid the price. The recovery of a single installment is perfectly consistent with the payment of the further installments by the buyer and the complete performance of the contract. The recovery of such installments ought not, therefore, to preclude the seller from retaking the goods later, in case of default. Haynes vs. Temple, 198 Mass. 372.

Upon the question of the effect of bringing an action for the entire balance of the price due, the authorities are not harmonious. The prevailing view is that the commencement of an action for the entire price prevents a retaking of the goods at a later time. Butler vs. Dodson & Son, 78 Ark. 569; Waltz vs. Silveira, 25 Cal. App. 717; North Robinson Dean Co. vs. Strong, 25 Idaho 721; Smith vs. Barber, 153 Ind. 322; Richards vs. Schreiber, 98 Iowa 422; Bailey vs. Hervey, 135 Mass. 172; Alden vs. Dyer, 92 Minn. 134; Frederickson vs. Schmittroth, 112 N. W. (Neb.) 564; Orcutt vs. Rickenbrodt, 42 App. Div. (N. Y.) 238; Dowagiac Mfg. Co. vs. Mahon, 13 N. D. 516; Sioux Falls Adjustment Co. vs. Aikens, 142 N. W. (S. D.) 651; Winton Motor Carriage Co. vs. Broadway Automobile Co., 118 Pac. (Wash.) 817. The contrary view has been maintained in E. E. Forbes Piano Co. vs. Wilson, 144 Ala. 586; Jones vs. Snider, 99 Ga. 276; Foster vs. Briggs Co., 98 S. W. (Ind. Terr.) 120; Westinghouse Co. vs. Auburn Co., 76 Atl. (Me.) 897; Campbell Mfg. Co. vs. Rockaway Pub. Co., 56 N. J. L. 676.

The minority view which is that adopted in Section 24 seems more reasonable and in accord with the chattel mortgage theory of a conditional sale. If an action for the price bars a later retaking of the goods, the seller will never dare to sue for the price and run the risk of getting a worthless judgment and losing his claim upon the goods. Just as an action for the chattel mortgage debt does not bar the foreclosure of the chattel mortgage at a later time, so an action for the purchase price under a conditional sale should not bar a later reliance on the reservation of the property in the goods as security.

## NOTE TO SECTION 25

In the two states which have a compulsory resale provision, namely, New York and Tennessee, the penalty for failure to carry out the resale provisions according to law is that the buyer may recover his part payments. Some penalty is necessary in order to insure that the resale will take place. It seems fair to allow the buyer his actual damages (the difference between the amount of his part payments and the value of the use of the property which he has had, and also the value of his bargain) and to fix a minimum penalty to be recovered in all cases. This will protect the buyer in all cases where his equity is of any appreciable value.

In Massachusetts, where the buyer may in some cases demand a resale, the penalty for failure to resell is that the right of redemption on the part of the buyer is not foreclosed. In Pennsylvania, where a similar right on the buyer's part to demand a resale exists, there seems to be no penalty for failure to resell after the demand.

## NOTE TO SECTION 26

This section is supported by decisions in three of the states having resale and redemption provisions for the benefit of the buyer. Desseau vs. Holmes, 187 Mass. 486; Drake vs. Metropolitan Mfg. Co., 218 Mass. 112; Crowe vs. Liquid Carbonic Co., 208 N. Y. 396; Massillon Engine & Thresher Co. vs. Wilkes, 82 S. W. (Tenn.) 316. In the absence of such a provision unscrupulous sellers would do away with the effect of the statute by waivers printed in small type in the contract. No act should constitute a waiver unless performed after the contract of conditional sale is complete.

## NOTE TO SECTION 27

The rule with respect to risk of loss is that adopted by the Uniform Sales Act and by a great majority of the states. Uniform Sales Act, Sec. 22; Blue vs. American Soda Fountain Co., 43 So. (Ala.) 709; Hollenberg Music Co. vs. Barron, 140 S. W. (Ark.) 582; O'Neil-Adams Co. vs. Eklund, 89 Conn. 232; Phenix Ins. Co. vs. Hilliard, 52 So. (Fla.) 799; Jessup vs. Fairbanks, Morse & Co., 78 N. E. (Ind.) 1050; Burnley vs. Tufts, 66 Miss. 48; Tufts vs. Wynne, 45 Mo. App. 42; Charles A. Stickney Co. vs. Nicholas, 152 N. W. (Neb.) 554; Collerd vs. Tully, 78 N. J. Eq. 557; Nat. Cash Reg. Co. vs. South Bay Club House Ass'n, 64 Misc. (N. Y.) 125; Whitlock vs. Auburn Lumber Co., 145 N. C. 120; Harley vs. Stanley, 105 Pac. (Okla.) 188; Carolina, etc., Co. vs. Unaka Springs Lumber Co., 130 Tenn. 354; Lavalley vs. Ravenna, 78 Vt. 152; Exposition Arcade Corp. vs. Lit Bros., 75 S. E. (Va.) 117. It seems desirable to insert this section in the Uniform Conditional Sales Act, although there may be a duplication of legislation in states where the Uniform Sales Act is already in force. The Uniform Sales Act does not expressly refer to conditional sales, but only to sales where the title is reserved as security for the payment of the price. Furthermore, states which have not adopted the Uniform Sales Act may adopt the Uniform Conditional Sales Act.

It is well established that the increase of goods sold under a conditional sale remain the property of the seller until the performance of the condition and then pass to the buyer with the original goods. Anderson vs. Leverette, 116 Ga. 732; Allen vs. Delano, 55 Me. 113; Desany vs. Thorp, 70 Vt. 31.

## NOTE TO SECTION 29

This section is modeled after Sec. 73 of the Uniform Sales Act and is inserted for the sake of completeness and clarity.

## NOTE TO SECTION 30

This important section is contained in all the Uniform Commercial acts to lead courts to consider in construing the act not only the previous jurisprudence of the state, but the law of other states.